

Exhibit 8

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3
4 IN RE JOHNSON & JOHNSON TALCUM,)
5 POWDER PRODUCTS MARKETING,) MDL NO.
6 SALES PRACTICES, AND PRODUCTS) 16-2738 (MAS)
7 LIABILITY LITIGATION) (RLS)
8 -----)

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10 --- This is the Deposition of GEORGE NEWMAN,
11 M.D., taken at the offices of Loopstra Nixon,
12 130 Adelaide Street West, Toronto, Ontario, on
13 the 15th day of May, 2024.

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25 REPORTED BY: LEILA HECKERT, CVR, RCP-M

Page 2	Page 4
<p>1 A P P E A R A N C E S:</p> <p>2 FOR THE PLAINTIFF,</p> <p>3 STEERING COMMITTEE AND THE MDL:</p> <p>4 ASHCRAFT & GEREL, LLP</p> <p>5 PER: MICHELLE A. PARFITT, ESQ.,</p> <p>6 & PER: CHRIS TISI (via Zoom)</p> <p>7 1825 K STREET NW,</p> <p>8 SUITE 700,</p> <p>9 WASHINGTON, DC 20006</p> <p>10 Email: mparfitt@ashcraftlaw.com</p> <p>11 Tel: 202-783-6400</p> <p>12</p> <p>13 & LUNDY LLP</p> <p>14 PER: RUDIE R. SOILEAU, JR., ESQ.</p> <p>15 501 BROAD ST,</p> <p>16 LAKE CHARLES, LA 70601</p> <p>17 Email: rudiesoileau@gmail.com</p> <p>18 Tel: 337-439-0707</p> <p>19</p> <p>20 & BEASLEY ALLEN</p> <p>21 PER: LEIGH O'DELL (via Zoom)</p> <p>22 218 COMMERCE STREET,</p> <p>23 MONTGOMERY, ALABAMA 36103</p> <p>24 Email: Leigh.odell@beasleyallen.com(334)</p> <p>25 Tel: 334-269-2343</p>	<p>1 I N D E X</p> <p>2 WITNESS: GEORGE NEWMAN, M.D.</p> <p>3 Examination by Mr. Ewald.....8</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 3	Page 5
<p>1 FOR THE DEFENDANT,</p> <p>2 JOHNSON & JOHNSON:</p> <p>3 KING & SPALDING</p> <p>4 PER: JOHN EWALD, ESQ.</p> <p>5 1185 6th AVE,</p> <p>6 NEW YORK, NY 10036</p> <p>7 Email: jewald@kslaw.com</p> <p>8 Tel: 212 790 5341</p> <p>9</p> <p>10 FOR THE PLAINTIFFS,</p> <p>11 DIANA & GILBERT BALDERRAMA,</p> <p>12 & BRANDI & JOEL CARL,</p> <p>13 ANAPOL WEISS</p> <p>14 PER: TRACY FINKEN (via Zoom)</p> <p>15 130 N 18th St #1600</p> <p>16 Tel: (215) 929-8822</p> <p>17 tfinken@anapolweiss.com</p> <p>18</p> <p>19 FOR PERSONAL CARE PRODUCTS COUNCIL,</p> <p>20 REILLY, MCDEVITT & HENRICH, P.C.</p> <p>21 PER: KEVIN KOTCH, ESQ., (via Zoom)</p> <p>22 3 EXECUTIVE CAMPUS, SUITE 310,</p> <p>23 CHERRY HILL, NEW JERSEY, 08002</p> <p>24 Email: kkotch@rmh-law.com</p> <p>25 Tel: (856) 317-7180</p>	<p>1 I N D E X</p> <p>2 NO./DESCRIPTION PAGE</p> <p>3 1 Dr. Newman's invoice to Ashcraft & 20</p> <p>4 Gerel, LLP - August 2023 to</p> <p>5 November 2023.</p> <p>6 2 Invoice from Dr. Newman to 21</p> <p>7 Ashcraft & Gerel, LLP - November</p> <p>8 2023 to December 2023.</p> <p>9 3 Dr. Newman's CV, updated April 34</p> <p>10 2024.</p> <p>11 4 Dr. Newman's November 2023 report. 51</p> <p>12 5 "Table of Contents George Newman - 51</p> <p>13 Expert Report."</p> <p>14 6 June 17, 1966 memo. J&J 97</p> <p>15 000235850. To Dr. Hildick-Smith,</p> <p>16 Subject: Johnson's Baby Powder</p> <p>17 Talc Aspiration. June 17, 1966.</p> <p>18 7 Food and Drug Administration 127</p> <p>19 Certificate - D-7214 (1986 FDA).</p> <p>20 8 Johnson & Johnson internal memo, 132</p> <p>21 "Windsor minerals and talc."</p> <p>22 April 26, 1973.</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 INDEX OF EXHIBITS</p> <p>2 NO./DESCRIPTION PAGE</p> <p>3 9 "Review On The Present Status Of 146</p> <p>4 Talc Safety Substantiation</p> <p>5 Activities And Update Of</p> <p>6 Contingency Plans," January 1975,</p> <p>7 Bates Number of J&J000026987.</p> <p>8 10 Johnson & Johnson document, 163</p> <p>9 Management Authorization for</p> <p>10 Additional Talc Safety Studies,</p> <p>11 March 3, 1975.</p> <p>12 11 Dr. Newman's notes. 178</p> <p>13 12 Letter from Alfred Wehner to 187</p> <p>14 Michael Chudkowski at J&J Consumer</p> <p>15 Products. J&J Bates Number</p> <p>16 000040596, September 17, 1997.</p> <p>17 13 Studies - Facts About Talc. 200</p> <p>18 14 American Cancer Society Cancer - 201</p> <p>19 Facts and Figures 2024.</p> <p>20 15 Campaign for Safe Cosmetics from 212</p> <p>21 safecosmetics.org site.</p> <p>22 16 "Is Talc in Makeup Safe?" from 213</p> <p>23 drugwatch.com site.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 --- Upon commencing at 9:24 A.M.</p> <p>2 (WHEREUPON, the witness was duly sworn.)</p> <p>3 GEORGE NEWMAN, M.D.,</p> <p>4 called as a witness herein,</p> <p>5 was examined and testified as follows:</p> <p>6 EXAMINATION BY MR. EWALD:</p> <p>7 Q. Dr. Newman, we met off the record</p> <p>8 and my name is John Ewald and we are having, I</p> <p>9 think, some connection issues, and so, please,</p> <p>10 if it any point in time you are not hearing, or</p> <p>11 need me to repeat anything, just let me know and</p> <p>12 I'll do my best to try to repeat the question,</p> <p>13 okay?</p> <p>14 A. Sounds great.</p> <p>15 Q. Is this (inaudible) before?</p> <p>16 A. Sorry. You broke up there. Can</p> <p>17 you repeat the question?</p> <p>18 Q. Have you been deposed before?</p> <p>19 A. No, I have not.</p> <p>20 Q. It seems like you've -- from the</p> <p>21 materials that you've reviewed, at least a</p> <p>22 couple of depositions, during your process in</p> <p>23 this case?</p> <p>24 A. Yes, I have.</p> <p>25 Q. So it seems like you probably</p>
<p style="text-align: right;">Page 7</p> <p>1 INDEX OF EXHIBITS</p> <p>2 NO./DESCRIPTION PAGE</p> <p>3 17 Dr. O'Brien's article published in 237</p> <p>4 JAMA, "Association of Powder Use</p> <p>5 in the Genital Area With Risk of</p> <p>6 Ovarian Cancer."</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 have a general idea of -- just to give you a</p> <p>2 couple of things on my end, especially with the</p> <p>3 connection issues. It's really important to try</p> <p>4 to make sure that I finish my question, and I'll</p> <p>5 try the same to make sure you've finished your</p> <p>6 answers so the court reporter can get everything</p> <p>7 down. Does that make sense?</p> <p>8 A. Sounds great.</p> <p>9 Q. And certainly, if at any point in</p> <p>10 time, you need to take a break, please just let</p> <p>11 me know. And the major point I make on that,</p> <p>12 though, is if there's a question pending, if</p> <p>13 I've asked you something, it makes sense to</p> <p>14 answer the question and then I'll give you a</p> <p>15 chance to take a break.</p> <p>16 A. Sounds great.</p> <p>17 Q. And do you understand that you</p> <p>18 are under oath and just like you would be if you</p> <p>19 were appearing in a trial?</p> <p>20 A. Yeah, I understand.</p> <p>21 Q. And the last little intro, if</p> <p>22 there's any question, even if you can hear me</p> <p>23 now to clear but the question doesn't make</p> <p>24 sense, please let me know and I'll do my best to</p> <p>25 rephrase because we want to make sure that you</p>

<p style="text-align: right;">Page 10</p> <p>1 understand the questions, okay?</p> <p>2 A. Okay. I appreciate that. Thank</p> <p>3 you.</p> <p>4 Q. So for the record, (inaudible).</p> <p>5 A. Mr. Ewald, I believe you broke</p> <p>6 up.</p> <p>7 Q. For the record, where are you</p> <p>8 located today?</p> <p>9 A. In Toronto, Ontario at the law</p> <p>10 offices of Loopstra Nixon.</p> <p>11 Q. And I think the stenographic</p> <p>12 record will reflect that counsel Michelle</p> <p>13 Parfitt and a few folks in the room. As we're</p> <p>14 working through the deposition, Dr. Newman, it</p> <p>15 will be helpful for me to understand what</p> <p>16 materials you have with you.</p> <p>17 Can you tell me what you have in paper</p> <p>18 form, for example, with you.</p> <p>19 A. Sure. I'm looking at a window</p> <p>20 and there is a small desk there that has nine</p> <p>21 binders. And so those binder are all of the</p> <p>22 materials that I cite in my report. In front of</p> <p>23 me I have a copy of my report, a recent copy of</p> <p>24 my CV, a table of contents for my report, three</p> <p>25 pages of typewritten notes, and all of those</p>	<p style="text-align: right;">Page 12</p> <p>1 screen or do you want me to pull the hard copy</p> <p>2 form here?</p> <p>3 Q. So that is really -- it's totally</p> <p>4 your preference as long as you feel comfortable.</p> <p>5 A. Okay.</p> <p>6 Q. And so, you know, I think, I</p> <p>7 will -- I'll probably not put on the screen your</p> <p>8 report as you have in front of you, so we can</p> <p>9 see each other as easily as possible. But if</p> <p>10 it's a document, I'll put it on the screen,</p> <p>11 sometimes it's a document that's one-page and,</p> <p>12 you know, that's all you need to look at. But</p> <p>13 if you're more comfortable looking at what's in</p> <p>14 the paper form, please just let me know, and</p> <p>15 we'll make sure you have it, okay?</p> <p>16 A. Great.</p> <p>17 MS. PARFITT: Hey, John, I'll also add</p> <p>18 that in addition to the materials, I wanted to</p> <p>19 make sure that you received a copy of the</p> <p>20 Dropbox that we sent last Friday. And then --</p> <p>21 MR. EWALD: Yes.</p> <p>22 MS. PARFITT: -- yesterday, there were</p> <p>23 a couple of websites that were in the Dropbox.</p> <p>24 I just wanted to make sure they found their way.</p> <p>25 I know we are different examiners, not everyone</p>
<p style="text-align: right;">Page 11</p> <p>1 notes are just excerpts from materials so all of</p> <p>2 that material is verbatim from materials that</p> <p>3 I'm citing. And then I just have a blank</p> <p>4 notepad so I can take notes during our</p> <p>5 conversation.</p> <p>6 Q. That's helpful. And, Michelle,</p> <p>7 it may be helpful maybe during a break to give a</p> <p>8 copy of the three pages of the separate notes.</p> <p>9 MS. PARFITT: John, what I can do is</p> <p>10 get that in the chat maybe during the break.</p> <p>11 How does that work?</p> <p>12 MR. EWALD: Perfect.</p> <p>13 MS. PARFITT: Thank you.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. I think as a matter, as we're</p> <p>16 going forward, Dr. Newman, that largely I'm</p> <p>17 going to be asking questions about the report.</p> <p>18 There are going to be some documents, most of</p> <p>19 them cited in your report, and I'll talk about</p> <p>20 and put up a screen, but certainly if you need</p> <p>21 time to pull something from the binder or</p> <p>22 anything like that, just let me know, okay?</p> <p>23 A. Sure. Just a question about</p> <p>24 protocol. When we do reference those documents,</p> <p>25 is it better for me to look at them on the</p>	<p style="text-align: right;">Page 13</p> <p>1 has received what they need, so I just want to</p> <p>2 make sure you have those. Very good.</p> <p>3 MR. EWALD: No. I definitely</p> <p>4 appreciate that, Michelle. And I did -- I think</p> <p>5 I received everything. We will see if I didn't</p> <p>6 as we proceed --</p> <p>7 MS. PARFITT: Let me know.</p> <p>8 MR. EWALD: Yep, great. Thank you.</p> <p>9 MS. PARFITT: Of course.</p> <p>10 BY MR. EWALD:</p> <p>11 Q. So, Dr. (inaudible) with --</p> <p>12 you're telling me how you got involved as an</p> <p>13 expert in this litigation?</p> <p>14 A. Sure. I received a call from</p> <p>15 Michelle Parfitt.</p> <p>16 Q. Okay. And, so, you received a</p> <p>17 call from Michelle Parfitt.</p> <p>18 And approximately when was that?</p> <p>19 A. Roughly June or July of last year</p> <p>20 of 2023.</p> <p>21 Q. All right. And (inaudible) you</p> <p>22 broke up a (inaudible). Did you say June or</p> <p>23 July 2023?</p> <p>24 A. Correct, yes.</p> <p>25 Q. I don't want to get to the</p>

<p style="text-align: right;">Page 14</p> <p>1 specifics of the conversation that you had with 2 Ms. Parfitt. 3 But you agreed to be retained at or 4 shortly after the time you spoke with her in 5 June or July of 2023? 6 A. Yeah, yeah. That's correct. 7 Q. In you report, and we'll get to 8 it. You talk about question or what you were 9 asked to review in connection in this case, if 10 you want to look at paragraph 9 of your report 11 on paper. 12 A. Great, yeah. 13 Q. When you were first retained in 14 this case, was the direction to you on what you 15 were going to review the same as what is 16 reflected in paragraph 9? 17 A. When I first spoke to 18 Ms. Parfitt, the -- it was basically just to 19 look into marketing and advertising as it 20 pertained to Johnson's talcum powder products. 21 Q. And, again, although there's a 22 slight breakup, I think I got it. When you 23 spoke with Ms. Parfitt, the initial (inaudible) 24 and advertising of Johnson & Johnson was that 25 specifically as it relates to talc?</p>	<p style="text-align: right;">Page 16</p> <p>1 research on this topic? 2 A. No, I didn't. 3 Q. And when you are starting to do 4 this research in June, July of 2023 -- maybe 5 just because you broke up earlier, can you just 6 repeat what was the specific issue that you were 7 looking at? 8 A. Sure. Generally, it was anything 9 related to the marketing of Johnson & Johnson 10 powder products, so the talcum powder products, 11 Johnson's Baby Powder, Shower to Shower, 12 Johnson's Baby Powder with cornstarch, and then 13 I was looking at documents relevant to, you 14 know, broadly the advertising, sale and 15 distribution of those products, also any, kind 16 of, consumer research that Johnson & Johnson had 17 done about those products or contracted with, so 18 I wanted -- those were other materials that I 19 wanted to look at. 20 Q. (Inaudible) initial review in 21 June, July 2023, you mentioned you received some 22 documents from counsel. Is that right? 23 A. Correct. Yes, so we would have 24 conversations periodically on the phone or Zoom, 25 and then I would indicate categories of</p>
<p style="text-align: right;">Page 15</p> <p>1 A. To talc and talcum powder 2 products and also the associated products, 3 cornstarch, et cetera. 4 Q. Right. So how did you go about 5 that first when (inaudible) into that issue, 6 what did you do? 7 THE REPORTER: Sorry. He needs to 8 repeat that. There was a word, I didn't catch. 9 THE WITNESS: Mr. Ewald, could you 10 repeat that question? 11 BY MR. EWALD: 12 Q. When you were first -- so when 13 you were asked (inaudible) the issue that we 14 just talked about in June, July of 2023, what 15 did you do? 16 A. Sure. So I looked at a bunch of 17 different categories of information. So, I 18 searched online, looked at, kind of, materials 19 that were out there from facts about talc, from 20 Health Canada, from, you know, some of the 21 Google Scholar, looking at some of the epi 22 studies, and then, you know, I also requested 23 documents from counsel. 24 Q. So did you get any guidance from 25 counsel on where to look in connection with your</p>	<p style="text-align: right;">Page 17</p> <p>1 documents that I was interested in reviewing. 2 And then, I would receive a link to a Dropbox 3 folder. And I would look at the documents in 4 that Dropbox folder. Many of the documents were 5 relevant, some weren't relevant to the things 6 that I was looking at. And so then I would just 7 focus on my attention, you know, on the 8 documents that were relevant to the marketing 9 issues. 10 MR. EWALD: We can go off the record 11 for just one moment. 12 -- OFF THE RECORD AT 9:38 A.M. 13 -- RESUME AT 9:55 A.M. 14 BY MR. EWALD: 15 Q. All right. Thank you, Dr. Newman 16 and Ms. Parfitt for your assistance. And I 17 think right now we are in a much better place 18 technology-wise. But my comment earlier, 19 Dr. Newman, remains the same: If at some point 20 in time I cut out or you don't heard me, just 21 let me know, okay? 22 A. Sounds great. 23 Q. Sure. When we went off the 24 record, we were talking at a high level of what 25 you started doing once you were engaged in the</p>

<p style="text-align: right;">Page 18</p> <p>1 case in June, July of 2023, you were talking 2 about some work that you had done. And at what 3 point in time, did you understand the question 4 that you were going to be answering would be 5 what is written out in paragraph 9 that we 6 talked about? 7 A. Maybe just ask for a bit of 8 clarification. By question, you mean, is there 9 a specific part of that statement? 10 Q. Right. Fair enough. So when I 11 started asking questions about this, you 12 indicated that the initial part of the retention 13 in June, July 2023, you are looking into the 14 marketing and sales practices of J&J, and it 15 wasn't necessarily being asked to do what is 16 stated in paragraph 9 as your task. Is that 17 fair? 18 A. Correct. If you are referring to 19 part, you know, were there aspects of the 20 marketing that were misleading or created 21 confusion. 22 Q. Right. 23 A. I would say that's something that 24 I couldn't give you an exact time at which that 25 happened, but it's something that evolved as I</p>	<p style="text-align: right;">Page 20</p> <p>1 document, reviewed, two and half hours. Do you 2 see that? 3 EXHIBIT NO. 1: Dr. Newman's invoice 4 to Ashcraft & Gerel, LLP - August 5 2023 to November 2023. 6 THE WITNESS: Yes. 7 BY MR. EWALD: 8 Q. And would that be the start date 9 for when you started your work on this project 10 in earnest? 11 A. That's when I started this 12 litigation, yeah. 13 Q. And if we scroll down through the 14 first page, it's all document review, phone 15 meeting. And then we get to October 27, '23 on 16 the second page. And it's the first entry of a 17 number of entries that's labelled "Draft 18 comment," do you see that? 19 A. Correct, yes. 20 Q. And what do you mean by "draft 21 comment"? 22 A. Just that I was working on the 23 comment that I was drafting the comment. 24 Q. And when you're -- understanding 25 that this may be your first rodeo in litigation,</p>
<p style="text-align: right;">Page 19</p> <p>1 was reviewing materials. You know, I was 2 beginning to form theories or an understanding 3 about what happened. And, so, I couldn't put it 4 at an exact point in time. But, you know, 5 something that evolved over time. 6 Q. So when we were talking about the 7 timeline overall, approximately when did you 8 start preparing the report? 9 A. It wasn't long after. Again, I 10 would say probably in October. But I don't know 11 for certain. 12 Q. Without getting into any 13 specifics, did anybody assist you in the 14 drafting of the report? 15 A. No. 16 Q. I'm going to mark a couple of 17 documents, to start us off, as exhibits that 18 were produced to me by counsel. I'm going put 19 up on the screen. And let me know if you have a 20 problem seeing it. Do you see that, Doctor? 21 A. Yep. 22 Q. Okay. And we'll mark this as 23 Exhibit 1. It is an invoice dated 11/21/23 from 24 Dr. Newman to the Ashcraft Law firm. And the 25 first entry here, Doctor, is August 8, 2023,</p>	<p style="text-align: right;">Page 21</p> <p>1 you're talking about comment, are you referring 2 to the expert report that you issued in November 3 2023? 4 A. Yes. That was my understanding 5 of what it was called, yeah. 6 Q. Sure. And then, let me mark next 7 as Exhibit 2 another invoice from Dr. Newman to 8 the Ashcraft firm. This one is -- appears to be 9 undated, but last time-entry is starting in 10 November of '23, and ending in December of '23, 11 correct? 12 EXHIBIT NO. 2: Invoice from 13 Dr. Newman to Ashcraft & Gerel, LLP - 14 November 2023 to December 2023. 15 THE WITNESS: Correct, yes. 16 BY MR. EWALD: 17 Q. And, so, your report is issued on 18 November 15th, 2023, correct? 19 A. Yes. That's correct. 20 Q. When you are reviewing documents 21 in the month or so following the issue -- the 22 issuance of your report, what were you looking 23 at? 24 A. So there were -- there were like 25 a couple of other experts, Dr. Kessler, in</p>

<p style="text-align: right;">Page 22</p> <p>1 particular, that I wanted to look at his report. 2 And then also the deposition when it was 3 available. So I remember I read that very 4 closely. And I believe that there might have 5 been a few other documents that I requested that 6 you know, as I continued to think about the 7 case, and my opinion is still evolving, right, 8 I'm still learning about the case, you know, 9 that I requested additional documents. 10 Q. So if I'm understanding you 11 correctly, it's one of the things you were 12 looking at in the month following issuance of 13 your report or other reports that have been 14 issued by plaintiff's experts around the same 15 time as yours in November of 2023? 16 A. And Dr. Kessler in particular, 17 yeah. 18 Q. And so you said that, 19 particularly interested in what Dr. Kessler had 20 to say, and why is that in connection with your 21 opinion here? 22 MS. PARFITT: Objection, broad. 23 THE WITNESS: Can you just restate the 24 question. I got a little confused there for a 25 second.</p>	<p style="text-align: right;">Page 24</p> <p>1 deposition more recently, right? 2 A. That's right. When it became 3 available. I don't recall exactly when that 4 was. 5 Q. Sometime approximately within the 6 last month or so, something like that? 7 A. I think that's right, yeah. 8 Q. Was there anything in 9 Dr. Kessler's deposition that modified the 10 opinions that you offer in your report dated 11 November 2023? 12 A. No. 13 Q. Now, I just showed you two 14 invoices. 15 Have you issued to Ms. Parfitt any 16 other invoices so far in this litigation? 17 A. No, I have not. 18 Q. And I could bring it back up, but 19 the second invoices ended with a time entry 20 sometime in December 2023, right? 21 A. Correct, yes. 22 Q. So if we are basically catching 23 us up to present, do you have an estimate of how 24 many hours you have spent on the case from, 25 let's say, end of December to today?</p>
<p style="text-align: right;">Page 23</p> <p>1 BY MR. EWALD: 2 Q. Sure. No problems. 3 Is what, if any, impact does 4 Dr. Kessler's report and deposition have on the 5 opinions that you are offering in this case? 6 A. Well, given his position, and 7 given that he was speaking to some of the 8 regulatory issues and some of the issues that, I 9 think, overlap with the marketing issues that I 10 was looking at, you know, I was curious to 11 better understand, you know, some of these 12 specific arguments that he was making in his 13 report. 14 Q. Are you relying on any of 15 Dr. Kessler's opinions for your opinions in this 16 case? 17 A. I wouldn't say that. I formed my 18 opinion, written my opinion, you know, when I 19 submitted my report. And, so, the things I 20 found were kind of consistent with my opinion, 21 but I wouldn't say that I relied on, you know, 22 his report at all in drafting mine. 23 Q. And we'll probably get more to 24 it. 25 But you had reviewed Dr. Kessler's</p>	<p style="text-align: right;">Page 25</p> <p>1 A. You know, I don't know exactly, 2 so I can venture a guess. But, you know, I 3 actually I don't -- I don't know exactly. I 4 wouldn't want to guess. 5 Q. You're learning fast, and I don't 6 want you to guess either. But if you had to 7 give a range, for example, if I were to say do 8 you have a reasonable sense that you billed 9 since the end of December 2023 over 100 hours, 10 does that sound right? 11 A. I don't think it would be over 12 100, no. 13 Q. Over 50? 14 A. Possibly, possibly. But I'm not 15 sure. Just to clarify, I mean, I haven't 16 billed, I haven't sent an invoice or anything, 17 yet, yeah. 18 Q. Okay. Just looking for an 19 estimate. 20 A. Sure. 21 Q. And if you had to break down into 22 different buckets, basically, how he spent your 23 time on this case from the beginning of the year 24 until today, what would you say? 25 A. Again, I would say the majority</p>

<p style="text-align: right;">Page 26</p> <p>1 is document review, just continuing to read and</p> <p>2 understand and going back and revisiting</p> <p>3 documents that I had read before, requesting new</p> <p>4 documents, reading those, like the deposition</p> <p>5 that we talked about.</p> <p>6 Q. Without getting into any of the</p> <p>7 specifics, did you meet with counsel in</p> <p>8 preparation for your deposition today?</p> <p>9 A. I did, yes.</p> <p>10 Q. And who did you meet with?</p> <p>11 A. I met with Michelle Parfitt and</p> <p>12 Rudie Soileau.</p> <p>13 Q. How many times did you meet with</p> <p>14 them in preparation for today's deposition?</p> <p>15 A. Met yesterday, and then there</p> <p>16 were a few phone meetings.</p> <p>17 Q. And how long did you meet with</p> <p>18 counsel yesterday?</p> <p>19 A. It was over half a day. I don't</p> <p>20 know the exact number of hours.</p> <p>21 Q. And apologies, sometimes "half a</p> <p>22 day" means something different to some people.</p> <p>23 If you guys say how many hours half a</p> <p>24 day is, and how many is that?</p> <p>25 A. Sorry. I was thinking about a</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Roughly, August, 20 -- July,</p> <p>2 August 2021.</p> <p>3 Q. Were you retained by a company</p> <p>4 for this purpose?</p> <p>5 A. No.</p> <p>6 Q. Were you retained by governmental</p> <p>7 body?</p> <p>8 A. No.</p> <p>9 Q. Retained by an individual?</p> <p>10 A. Yes.</p> <p>11 Q. Did that retention have anything</p> <p>12 to do with talc?</p> <p>13 A. It did, yes.</p> <p>14 Q. Are you relying, in part, on what</p> <p>15 you learned during that consulting arrangement</p> <p>16 for your opinion today?</p> <p>17 A. Yes, I am.</p> <p>18 Q. And do you understand that prior</p> <p>19 consulting arrangement is confidential?</p> <p>20 A. I do, yes. I signed an NDA.</p> <p>21 Q. Did the work have to do with</p> <p>22 potential health effects associated with talc?</p> <p>23 A. It did, yes.</p> <p>24 Q. And if I ask you who retained</p> <p>25 you, would you be able to tell me as part of</p>
<p style="text-align: right;">Page 27</p> <p>1 workday. More than four and under eight.</p> <p>2 Q. And, fortunately, I think</p> <p>3 Ms. Parfitt and I sometime have days that are</p> <p>4 longer than eight hours.</p> <p>5 MS. PARFITT: I agree, John.</p> <p>6 MR. EWALD: You're on the same page.</p> <p>7 MS. PARFITT: Yes.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. You mentioned that you've never</p> <p>10 been deposed before.</p> <p>11 Have you ever given testimony of any</p> <p>12 kind before?</p> <p>13 A. No, I haven't.</p> <p>14 Q. In this case you are disclosed as</p> <p>15 an expert.</p> <p>16 Have you ever been retained as what</p> <p>17 you understood to be a confidential consulting</p> <p>18 expert, before today, in litigation?</p> <p>19 A. Yes.</p> <p>20 Q. And I don't want to get into</p> <p>21 specifics. But let's get a little bit more info</p> <p>22 on that so we will see.</p> <p>23 Approximately when did you get</p> <p>24 retained for this confidential consulting</p> <p>25 matter?</p>	<p style="text-align: right;">Page 29</p> <p>1 your NDA?</p> <p>2 A. I believe so, yeah.</p> <p>3 Q. So who would be --</p> <p>4 A. Michelle Parfitt.</p> <p>5 Q. Can you describe to me what work</p> <p>6 you did back in July, August 2021 relating to</p> <p>7 talc?</p> <p>8 A. Again, looking at very similar</p> <p>9 issues. Looking into, basically, the marketing</p> <p>10 issues pertaining to talc, talcum powder</p> <p>11 products, you know, the associated products, but</p> <p>12 focused on advertising, distribution, sale,</p> <p>13 consumer research, that type of stuff.</p> <p>14 Q. Approximately how many hours did</p> <p>15 you bill on the consulting project in 2021?</p> <p>16 A. Again, this would be a rough</p> <p>17 estimate. But using the benchmarks that we</p> <p>18 established before, I would say over 100 hours.</p> <p>19 Q. When did all that work happen</p> <p>20 2021?</p> <p>21 A. I don't recall exactly. The bulk</p> <p>22 of it, yeah, happened in 2021, probably spanning</p> <p>23 it to 2022 a little bit as well, yeah.</p> <p>24 Q. Did that work result in any kind</p> <p>25 of written work product?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. No, it did not.</p> <p>2 Q. When you started work in 2023 on</p> <p>3 what ended up in your current report, did you,</p> <p>4 as part of your work, go back to the materials</p> <p>5 that you reviewed in 2021?</p> <p>6 A. Yeah. Yes, that's right.</p> <p>7 Q. And are those -- are any of the</p> <p>8 materials that you consider to be your opinions</p> <p>9 in this case - that you reviewed first in 2021 -</p> <p>10 reflected on your preference list and report?</p> <p>11 A. If I understand the question</p> <p>12 right, everything --</p> <p>13 Q. Right.</p> <p>14 A. -- that is in -- that is</p> <p>15 referenced in my report would be inclusive of,</p> <p>16 basically, everything that I was learning, all</p> <p>17 the material that I reviewed, 2021 up until, you</p> <p>18 know, present-day.</p> <p>19 Q. When Ms. Parfitt reached out to</p> <p>20 you in 2021, did you have an understanding about</p> <p>21 how she connected with you?</p> <p>22 A. I don't -- actually, I have no</p> <p>23 idea.</p> <p>24 Q. Do you recall what rate -- hourly</p> <p>25 rate you charged for your time in 2021?</p>	<p style="text-align: right;">Page 32</p> <p>1 variety of sources, some from the Kilmer House</p> <p>2 website, some from eBay, and other kinds of</p> <p>3 secondhand retailers. And then, you know, there</p> <p>4 are the documents that I requested of counsel.</p> <p>5 Q. When you are looking for</p> <p>6 resources online, were you using any -- let me</p> <p>7 withdraw it.</p> <p>8 When you were looking at resources</p> <p>9 online, were you making any kind of an</p> <p>10 assessment as to whether or not the information</p> <p>11 being provided was reliable?</p> <p>12 A. Yes, to the best of my ability, I</p> <p>13 was, yes.</p> <p>14 Q. So to the best of your ability,</p> <p>15 to extent that you're reviewing information</p> <p>16 online about alleged health risks associated</p> <p>17 with ovarian cancer, what, if any, expertise do</p> <p>18 you have to assess whether or not what is being</p> <p>19 asserted is reliable?</p> <p>20 MS. PARFITT: Objection, form.</p> <p>21 THE WITNESS: My training is in</p> <p>22 cognitive science, so I'm not an epidemiologist</p> <p>23 or a medical doctor of any kind. But I am</p> <p>24 trained as a scientist, I practice as a</p> <p>25 scientist, so, you know, I can understand</p>
<p style="text-align: right;">Page 31</p> <p>1 A. It was the same rate, \$600 an</p> <p>2 hour.</p> <p>3 Q. While we're on that topic, is</p> <p>4 that \$600 an hour for document review,</p> <p>5 deposition today, trial if it's happening,</p> <p>6 everything?</p> <p>7 A. Not for, like, the deposition</p> <p>8 today. My hourly is 750.</p> <p>9 Q. And what about trial testimony,</p> <p>10 if it happens?</p> <p>11 A. It would also be 750. But,</p> <p>12 again, I'm new to all of this, but so that</p> <p>13 hasn't happened.</p> <p>14 Q. That's fair.</p> <p>15 What was the process in 2021 for your</p> <p>16 review of materials?</p> <p>17 A. Like we discussed before, I mean,</p> <p>18 it was the same process as in 2023. So I was</p> <p>19 looking at different categories of information,</p> <p>20 so, you know, looking for resources online,</p> <p>21 looking to the literature, the scientific</p> <p>22 literature, both, you know, epidemiological</p> <p>23 studies, as well as relevant work in my area of</p> <p>24 expertise, consumer behaviour and psychology.</p> <p>25 Looking at advertisements, which came from a</p>	<p style="text-align: right;">Page 33</p> <p>1 scientific writing, understand, you know, basic</p> <p>2 statistics and that sort of thing.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. And understanding that you can</p> <p>5 understand the scientific writing, do you have</p> <p>6 the expertise, in your view, to assess whether</p> <p>7 or not a scientific statement about health risk</p> <p>8 associated with talc is based on reliable</p> <p>9 information?</p> <p>10 A. Not at that kind of granularity,</p> <p>11 no. I would say reading it as a scientist from</p> <p>12 an adjacent field, and I would say that that is,</p> <p>13 kind of, the limit of my expertise there.</p> <p>14 Q. At any point in time from 2021</p> <p>15 when you were first retained by Ms. Parfitt</p> <p>16 until today, have you spoken with anyone that</p> <p>17 you understand to be a plaintiff expert in this</p> <p>18 MDL?</p> <p>19 A. No, I haven't.</p> <p>20 Q. And have you sought guidance from</p> <p>21 any scientist in connection with the opinions</p> <p>22 that you are offering in your November 2023</p> <p>23 report?</p> <p>24 A. When you say "scientist", could</p> <p>25 you be more specific?</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. Well, I'm assuming based on your</p> <p>2 time entries and what you've said that you have</p> <p>3 conferred with counsel in connection with the</p> <p>4 preparation of your November 2023 report, right?</p> <p>5 A. Sure, yes, that's right.</p> <p>6 Q. And maybe a better way to ask it</p> <p>7 is have you conferred with anyone, other than</p> <p>8 counsel, in connection with the opinions that</p> <p>9 you are offering in your November 2023 report?</p> <p>10 A. No.</p> <p>11 Q. Let's pull up and mark as</p> <p>12 Exhibit 3 your CV that I received from counsel.</p> <p>13 Can you see that, Doctor?</p> <p>14 EXHIBIT NO. 3: Dr. Newman's CV,</p> <p>15 updated April 2024.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. EWALD:</p> <p>18 Q. And this CV has a date in the</p> <p>19 upper left corner of April 2024. Is it your</p> <p>20 current CV?</p> <p>21 A. It is, yes.</p> <p>22 Q. So, your current position is</p> <p>23 Associate Professor of Organizational Behaviour</p> <p>24 in Human Resource Management and Marketing</p> <p>25 Rotman School of Management in the University of</p>	<p style="text-align: right;">Page 36</p> <p>1 A. My wife is also a professor, and</p> <p>2 so we had what's called the two-body problem,</p> <p>3 and just trying to be at the same place, and so</p> <p>4 we were able to -- she had a position at the</p> <p>5 University of Toronto, and so they were able to</p> <p>6 make a position for me, and so I joined last</p> <p>7 year.</p> <p>8 Q. Okay. I believe you mentioned in</p> <p>9 your report on paragraph 2 that when you were at</p> <p>10 Yale, you were tenure-track faculty. Is that</p> <p>11 correct?</p> <p>12 A. That's correct, yes.</p> <p>13 Q. You did not make tenure while you</p> <p>14 were at Yale?</p> <p>15 A. No, no.</p> <p>16 Q. Correct?</p> <p>17 A. Correct, that's right.</p> <p>18 Q. In your CV, you have a change in</p> <p>19 title in 2016 from Associate Professor of</p> <p>20 Management at Yale School of Management to</p> <p>21 Associate Professor of Management and Marketing,</p> <p>22 right?</p> <p>23 A. Correct. Yes, that's right.</p> <p>24 Q. What was that change about?</p> <p>25 A. So there's a promotion, so that</p>
<p style="text-align: right;">Page 35</p> <p>1 Toronto. Is that correct?</p> <p>2 A. That is correct, yes.</p> <p>3 Q. And does -- you were not a</p> <p>4 tenured professor at the University of Toronto?</p> <p>5 A. No, I'm not.</p> <p>6 Q. Do they have a tenure-track at</p> <p>7 the University of Toronto?</p> <p>8 A. Yes, they do.</p> <p>9 Q. Are you on the tenure-track?</p> <p>10 A. Well, it's a complicated</p> <p>11 question. When I was hired, it was during a</p> <p>12 hiring freeze, essentially, at the university,</p> <p>13 and so the position I'm on is not, but as a line</p> <p>14 opens up, then I would convert to that. And so</p> <p>15 that's what the designation of the associate</p> <p>16 professor rank, kind of, signifies which is</p> <p>17 that, you know, I would be moving into that role</p> <p>18 on the tenure line once a tenure line position</p> <p>19 is open.</p> <p>20 Q. But as of right now, you're not</p> <p>21 tenure-track at the University of Toronto?</p> <p>22 A. Correct, that's right.</p> <p>23 Q. What was the reason for the</p> <p>24 change from Yale in 2022 to the University of</p> <p>25 Toronto?</p>	<p style="text-align: right;">Page 37</p> <p>1 would be the next step and then maybe just</p> <p>2 trying to anticipate your -- a question. So</p> <p>3 tenure is at the full level at Yale, so I was</p> <p>4 not -- you know, was not full professor at Yale,</p> <p>5 but was associate then came to Rotman.</p> <p>6 Q. Are you currently teaching</p> <p>7 classes?</p> <p>8 A. I am.</p> <p>9 Q. In Toronto?</p> <p>10 A. Yes. Not currently, but, yes.</p> <p>11 Q. I always forget when the school</p> <p>12 year ends.</p> <p>13 But for the last semester, for</p> <p>14 example, what classes did you teach?</p> <p>15 A. I taught the Intro to</p> <p>16 Organizational Behaviour course.</p> <p>17 Q. And if you had to give me a brief</p> <p>18 overview of what that class is about, what would</p> <p>19 you say?</p> <p>20 A. Largely, it's the study of people</p> <p>21 working together in groups and teams and</p> <p>22 organizations. And so it's a broad overview of</p> <p>23 the psychology and sociology in trying to</p> <p>24 understand those dynamics.</p> <p>25 Q. Since you've been at Toronto,</p>

<p style="text-align: right;">Page 38</p> <p>1 have you taught any other classes?</p> <p>2 A. Not at Toronto, no.</p> <p>3 Q. What are the types of classes</p> <p>4 that you taught while you were at Yale?</p> <p>5 A. I taught consumer behaviour. And</p> <p>6 then I also taught a class that was very similar</p> <p>7 to Intro to Organizational Behaviour there, it</p> <p>8 was called "The Employee," but essentially, the</p> <p>9 same kind of class.</p> <p>10 Q. Consumer behaviour, what sorts of</p> <p>11 topics did you cover?</p> <p>12 A. So consumer behaviour is,</p> <p>13 basically, the psychological and strategy issues</p> <p>14 around marketing, but, you know, taught from the</p> <p>15 perspective or from the vantage of the consumer,</p> <p>16 so trying to understand the nature of consumer</p> <p>17 perceptions and how that intersects with a</p> <p>18 company's marketing strategy.</p> <p>19 Q. Typically, how do you understand</p> <p>20 the nature of consumer perceptions?</p> <p>21 A. You'll have to be a little bit</p> <p>22 more specific.</p> <p>23 Q. Well, what are -- in your class,</p> <p>24 what do you teach the students about how are</p> <p>25 some different ways to understand the nature of</p>	<p style="text-align: right;">Page 40</p> <p>1 lack of a better term, of different types of</p> <p>2 experimental work?</p> <p>3 A. Yeah, sure. So, typically, you</p> <p>4 would divide up a psychology department into</p> <p>5 cognitive psychology, which is what my training</p> <p>6 is in, it's basically the study of thinking;</p> <p>7 social psychology, which is all about</p> <p>8 interpersonal and group relationships. A lot of</p> <p>9 my work also dovetails with social psychology;</p> <p>10 then, you know, you might have personality</p> <p>11 psychology, you might have clinical psychology</p> <p>12 as part of that track. You might have</p> <p>13 neuroscience or behavioural neuroscience that</p> <p>14 would be part of a psychology department. But</p> <p>15 those are all, would be, you know, experimental</p> <p>16 fields within psychology.</p> <p>17 Q. And, so, within specifically, you</p> <p>18 talked about cognitive psychology and social</p> <p>19 psychology, are they different types of accepted</p> <p>20 empirical methods that psychologist use to find</p> <p>21 out about consumer perceptions?</p> <p>22 A. Absolutely, yes.</p> <p>23 Q. And what are those?</p> <p>24 A. There's a variety of methods. I</p> <p>25 would say some of the most common ones would be</p>
<p style="text-align: right;">Page 39</p> <p>1 consumer protections -- oh, perceptions, sorry.</p> <p>2 A. Sure. Well, I mean, you know,</p> <p>3 one, you know, we would, kind of, talk about it</p> <p>4 in terms of important psychological principles.</p> <p>5 But, you know, one, you know, big topic is the</p> <p>6 role of expectation of people's prior</p> <p>7 expectations and beliefs, and how that changes</p> <p>8 things. And so, you know, people might express</p> <p>9 a strong preference for Coke over Pepsi, but in</p> <p>10 a blind taste test, they can't distinguish them</p> <p>11 apart. So trying to understand how things like</p> <p>12 brand or brand awareness change consumer</p> <p>13 psychology, change purchase habits.</p> <p>14 Q. And so if you're trying to</p> <p>15 understand the consumers' prior expectations and</p> <p>16 beliefs, for example, in your Coke example, how</p> <p>17 would you go about determining those consumer</p> <p>18 perceptions?</p> <p>19 A. So I'm an experimental</p> <p>20 psychologist, so the work that I'm talking about</p> <p>21 in my classes and the work that I'm doing as</p> <p>22 part of my day-to-day are all psychology</p> <p>23 experiments, essentially.</p> <p>24 Q. And as an experimental</p> <p>25 psychologist, are there established buckets, for</p>	<p style="text-align: right;">Page 41</p> <p>1 an experiment, or maybe you are familiar with</p> <p>2 A/B testing, I think is the way that idea has</p> <p>3 spilled over into the broader public. But you</p> <p>4 would expose two different randomly assigned</p> <p>5 groups to similar information that differs in</p> <p>6 one important way, and then look at some outcome</p> <p>7 measure to see how that variables then affected</p> <p>8 whatever dependent measure you were interested</p> <p>9 in.</p> <p>10 Another method would be looking at</p> <p>11 kind of regression, using regression analyses to</p> <p>12 understand larger patterns of behaviour. So you</p> <p>13 might get data from SKUs in a store, or you</p> <p>14 might be taking some other kind of behavioural</p> <p>15 measure; how often people donate to this</p> <p>16 particular cause, and you'd say, Well, I've got</p> <p>17 a hypothesis about some of the predicting</p> <p>18 factors.</p> <p>19 Another method would be a field</p> <p>20 experiment where you're making some kind of</p> <p>21 random assignment in the field. You know, and</p> <p>22 then a lot of the other methodologies are</p> <p>23 directly overlapping with -- all of the</p> <p>24 methodologies, to be clear, that I talked about,</p> <p>25 are directly overlapping with psychology; those</p>

<p style="text-align: right;">Page 42</p> <p>1 are psychological methods. And then there might 2 be, kind of, more nuanced methods, like using 3 eye-tracking software or using -- you know, 4 doing fMRI work, or something like that that 5 would all be part of, you know, research in 6 marketing or research in consumer behaviour but 7 using psychology. 8 Q. Thank you. Very helpful. 9 A. Sure. 10 Q. Didn't even have to take the 11 class. 12 Have you ever published on how 13 companies communicate with consumers with 14 respect to health risks of their products? 15 A. I apologize for pausing for a 16 second. I'm just trying to think. Not -- not 17 directly on -- not directly on health risks. 18 Q. Anything indirectly on health 19 risks? 20 A. Sure, I mean, I've published a 21 lot on what companies communicate about 22 production methods, about things like 23 sustainability, various kinds of environmental 24 methods, things like manufacturing location. So 25 these additional features about a product, and,</p>	<p style="text-align: right;">Page 44</p> <p>1 to any particular company. Is that fair? 2 A. That's right, yeah. And it's a 3 very common method in these studies is that you 4 would, kind of, blind the company so you're not 5 drawing on people's pre-existing beliefs about a 6 particular organization. 7 Q. You said that that work has not 8 been published. 9 Was it submitted for publication? 10 A. No. It wasn't. It was -- 11 sometimes you have it that graduate students 12 will often be the lead on a project, and then 13 sometimes graduate students go elsewhere and, 14 kind of, disappear, and with that goes the 15 project. And so, it's one of those kind of 16 languishing things but, yeah. 17 Q. So, approximately, what time did 18 you work on this project with the graduate 19 students? 20 A. I would say that was probably six 21 years ago or so. 22 Q. Have you ever -- apart from your 23 work since 2021 with Ms. Parfitt, have you done 24 any work related to Johnson & Johnson? 25 A. No.</p>
<p style="text-align: right;">Page 43</p> <p>1 you know, I have collected data and been 2 involved in collaborations where we have looked 3 at the communication regarding corporate crises 4 and health risks specifically. I was just 5 pausing because I don't think we published those 6 studies. But a lot of studies that are very 7 related to that idea. 8 Q. The corporate crisis health risk 9 data that you collected but was not published, 10 what did that relate to? 11 A. That was different responses to a 12 corporate crisis. So does a company respond in 13 an engaged manner, in a defensive manner, or 14 with no comment? So we were looking at those 15 different strategies. These are all for 16 hypothetical companies, so we're stripping 17 information about the company away, and just 18 using, kind of, the bare facts of what happened 19 and then we are tweaking the company response 20 and looking to how that influences consumer 21 perceptions. 22 Q. And so when you say "hypothetical 23 company", am I understanding you correctly that 24 it is based on actual companies and what 25 occurred, but you were not attributing that data</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Before being retained in 2021, 2 what, if anything, did you know about talc? 3 A. Virtually nothing. I just knew 4 that it was a product. 5 Q. Did you know at the time in 2021 6 of any alleged health risks with the use of 7 talc? 8 A. Not really, no. 9 Q. Before being retained in 2021, 10 what, if anything, did you know about asbestos? 11 A. Very little. 12 Q. And though it's hard to cast your 13 mind back, but if you had to say what you knew 14 in 2021 what very little was, what did you know 15 about asbestos? 16 MS. PARFITT: Objection, form. 17 THE WITNESS: That it was harmful. 18 BY MR. EWALD: 19 Q. Anything else? 20 A. You know that it used to -- was 21 used in some manufacturing, and so that you 22 could get asbestos in an old building, and that 23 kind of thing. 24 Q. When you got retained in 2021 25 before today, did you do any background research</p>

<p style="text-align: right;">Page 46</p> <p>1 for yourself relating to asbestos specifically?</p> <p>2 A. I did a little bit of reading,</p> <p>3 yeah.</p> <p>4 Q. And what do you recall looking</p> <p>5 at?</p> <p>6 A. Well, and I don't remember, you</p> <p>7 know, I'm looking at a variety of sources online</p> <p>8 and trying to just educate myself. But</p> <p>9 learning, for instance, about the co-occurrence</p> <p>10 of asbestos in natural formations, understanding</p> <p>11 that or what I believe to understand that</p> <p>12 asbestos refers to a certain shape of a</p> <p>13 particle, that's kind of like needle-like fibre.</p> <p>14 I wasn't really aware of that with that kind of</p> <p>15 specificity before.</p> <p>16 Q. When you say that, to your</p> <p>17 understanding, that asbestos refers to shape and</p> <p>18 needle-like fibre, where did you get that</p> <p>19 understanding?</p> <p>20 A. Again, I don't know. I</p> <p>21 couldn't -- I couldn't say. I mean, at some</p> <p>22 point in doing research and just trying to read</p> <p>23 about what asbestos is online, you know, my</p> <p>24 go-to usually is Google Scholar, that's where I</p> <p>25 try to get a lot of my information, and so it</p>	<p style="text-align: right;">Page 48</p> <p>1 issuing your opinions in this case about whether</p> <p>2 or not Johnson & Johnson talc has ever been</p> <p>3 contaminated with asbestos?</p> <p>4 A. No, I am not.</p> <p>5 Q. Has counsel asked you to make any</p> <p>6 assumptions in connection with the opinions that</p> <p>7 you're offering in this matter?</p> <p>8 MS. PARFITT: Objection, form.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. I saw in your materials reviewed</p> <p>11 references to certain plaintiff expert reports</p> <p>12 including Dr. William Longo. Do you know who</p> <p>13 that is?</p> <p>14 A. Only that he is another expert</p> <p>15 witness in this litigation.</p> <p>16 Q. Have you reviewed any of his</p> <p>17 reports?</p> <p>18 A. Not closely at all, no.</p> <p>19 Q. Are you relying, in any way, on</p> <p>20 the opinions that Dr. Longo is offering in his</p> <p>21 reports?</p> <p>22 A. No, I am not.</p> <p>23 Q. Do you recall reviewing expert</p> <p>24 reports of Dr. Plunkett and Dr. McTiernan?</p> <p>25 A. I recall the name Plunkett,</p>
<p style="text-align: right;">Page 47</p> <p>1 was consulting materials there, but I don't</p> <p>2 remember exactly which ones.</p> <p>3 Q. And that's fair. But as you sit</p> <p>4 here today, can you point me to any particular</p> <p>5 source that you were using your definition of</p> <p>6 asbestos?</p> <p>7 A. You know, and, I wouldn't -- I</p> <p>8 wouldn't even say that I have a definition of</p> <p>9 asbestos, at all. I interpreted your question</p> <p>10 as, you know, what did you know before and what</p> <p>11 do you know now? I would describe my knowledge</p> <p>12 now as very, very limited, and would just</p> <p>13 describe it as an understanding of something</p> <p>14 that changed prior; I just didn't know what</p> <p>15 asbestos was at all and think that I have at</p> <p>16 least some slight idea of what it might be now.</p> <p>17 Q. Do you have an understanding as</p> <p>18 to whether or not there is a debate among</p> <p>19 scientists as to the definition of asbestos?</p> <p>20 A. No. I'm not aware of that.</p> <p>21 Q. Are you offering any opinions</p> <p>22 about whether or not Johnson & Johnson talc</p> <p>23 products has ever contained asbestos?</p> <p>24 A. No, I am not.</p> <p>25 Q. Are you making any assumptions in</p>	<p style="text-align: right;">Page 49</p> <p>1 Dr. Plunkett. And, again, that might be one of</p> <p>2 those reports that I glanced at, but I did not</p> <p>3 review carefully.</p> <p>4 Q. Are there any expert reports that</p> <p>5 you reviewed, as you say, carefully or more</p> <p>6 detail apart from Dr. Kessler's?</p> <p>7 A. Sage.</p> <p>8 Q. And do you rely on the opinions</p> <p>9 in Dr. Sage's reports for your opinions here?</p> <p>10 A. No.</p> <p>11 Q. Did anything that you reviewed in</p> <p>12 Dr. Sage's report or deposition modify the</p> <p>13 opinions that are articulated in your November</p> <p>14 2023 report?</p> <p>15 A. No, not that I can recall.</p> <p>16 Q. Are you going to be offering any</p> <p>17 opinions as to whether or not Johnson & Johnson</p> <p>18 complied with its regulatory obligations over</p> <p>19 the years as it relates to talc?</p> <p>20 A. No.</p> <p>21 Q. Are you going to be offering any</p> <p>22 opinions about what, if any, changes should have</p> <p>23 been made to the product warning label?</p> <p>24 A. No.</p> <p>25 Q. Are you going to be offering any</p>

<p style="text-align: right;">Page 50</p> <p>1 opinions as to what specific language should</p> <p>2 have been included in advertisements to warn of</p> <p>3 potential health risks?</p> <p>4 A. No. Not specific language.</p> <p>5 Q. Do you have any expertise in</p> <p>6 assessing the benefits and health risks of a</p> <p>7 product in determining whether or not it should</p> <p>8 be marketed?</p> <p>9 A. No, not -- as I understand your</p> <p>10 question, you know, in the way that, like, a</p> <p>11 regulatory body would make that judgment, no, I</p> <p>12 don't have any experience to that effect.</p> <p>13 MR. EWALD: So, we have been going for</p> <p>14 about an hour. I'm about to change topics. I</p> <p>15 am happy to keep going. But I'm also happy to</p> <p>16 take a break if folks want to take a break.</p> <p>17 MS. PARFITT: Doctor, it's up to you.</p> <p>18 If you're good --</p> <p>19 THE WITNESS: Will the next road stop</p> <p>20 be another hour from now?</p> <p>21 MR. EWALD: No. I mean, that's</p> <p>22 completely up to you and the court reporter. If</p> <p>23 anyone needs the restroom or anything like that,</p> <p>24 let me know.</p> <p>25 THE WITNESS: I'm good to keep going</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. EWALD:</p> <p>2 Q. Got it. Makes sense. Let's talk</p> <p>3 about your report, and if you have it in front</p> <p>4 of you -- I can also put it up on the screen if</p> <p>5 you need any help in pointing to the right</p> <p>6 direction. I want to start at paragraph 9. Let</p> <p>7 me know when you're there.</p> <p>8 A. Yep, I'm here.</p> <p>9 Q. So in paragraph 9, first sentence</p> <p>10 states:</p> <p>11 "I was asked to review Johnson &</p> <p>12 Johnson's practices regarding the</p> <p>13 promotion and sale (i.e., marketing)</p> <p>14 of Johnson's talcum powder products,</p> <p>15 and to assess whether the company</p> <p>16 engaged in misleading and deceptive</p> <p>17 conduct that created confusion and</p> <p>18 misunderstanding among consumers by</p> <p>19 failing to communicate and</p> <p>20 appropriately inform consumers of</p> <p>21 health risks associated with Johnson's</p> <p>22 talcum powder products."</p> <p>23 First question, did I read that,</p> <p>24 correctly?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 right now. I just didn't want to -- you know,</p> <p>2 not driving through Kansas or something.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. Let's keep going then. I will</p> <p>5 mark as Exhibit 4 your November 2023 report.</p> <p>6 And, Doctor, if you flip near the end to Exhibit</p> <p>7 B, there's a references list.</p> <p>8 EXHIBIT NO. 4: Dr. Newman's</p> <p>9 November 2023 report.</p> <p>10 THE WITNESS: Yeah, okay.</p> <p>11 BY MR. EWALD:</p> <p>12 Q. And I'm also going to mark as</p> <p>13 Exhibit 5 what we received called "Table of</p> <p>14 Contents. George Newman - Expert Report." I'll</p> <p>15 put this up on the screen. This is Exhibit 5.</p> <p>16 Our Exhibit B to your November 2023 report, is</p> <p>17 that the same as this table of contents?</p> <p>18 EXHIBIT NO. 5: "Table of Contents</p> <p>19 George Newman - Expert Report."</p> <p>20 THE WITNESS: My understanding is that</p> <p>21 those should be very, very similar, and the --</p> <p>22 if there are any additional documents, they</p> <p>23 would be in that "Table of Contents" document,</p> <p>24 which would reflect things that I have reviewed</p> <p>25 since I submitted my report.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. And then you go on to say in</p> <p>2 paragraph 9 and:</p> <p>3 "I was not asked to give an</p> <p>4 opinion as to whether talcum powder</p> <p>5 products cause cancer."</p> <p>6 Is that correct?</p> <p>7 A. That's correct, yes.</p> <p>8 Q. And when you're talking about in</p> <p>9 that first sentence of paragraph 9, "health</p> <p>10 risks associated with Johnson's talcum powder</p> <p>11 products," is that, in your review, limited to</p> <p>12 ovarian cancer health risk or is it broader?</p> <p>13 A. You know, I -- it is -- no, it's</p> <p>14 not limited to ovarian cancer. So I would say</p> <p>15 that it's broader than ovarian cancer, yeah.</p> <p>16 Q. And does it encompass any</p> <p>17 possible health risk, as you understand it,</p> <p>18 associated with the talc?</p> <p>19 A. Well, the -- no, the other cancer</p> <p>20 risk associated with talc, although, you know, I</p> <p>21 would say the same -- the same behaviours also</p> <p>22 apply in the inhalation concerns, as well.</p> <p>23 Q. So when you say "behaviours,"</p> <p>24 you're talking about behaviours of Johnson &</p> <p>25 Johnson or behaviours of consumers?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. Sorry. Behaviours of Johnson & 2 Johnson. Yeah, the actions. 3 Q. And when you're talking about 4 inhalation -- that applies to the inhalation 5 concern, what is your understanding of that 6 inhalation concern? 7 A. My understanding is that there 8 was a concern raised about the inhalation risk 9 in a few different medical journals, The Journal 10 of Pediatrics is one that I recall. And then -- 11 and then from what the -- the documents that I 12 reviewed, you know, those risks were not 13 communicated and those concerns were not 14 communicated directly to consumers. 15 Q. And when you're talking about 16 risk, you understand that the inhalation risk 17 was specific to infants? 18 A. I do understand that, yes. 19 Q. When you say that that concern 20 was not communicated to consumers, is that your 21 understanding as to the present day? 22 A. I'm sorry. I'm getting tripped 23 up. What do you mean by -- 24 Q. Yeah, that was a little vague, 25 and unintentionally. So, do you have an</p>	<p style="text-align: right;">Page 56</p> <p>1 that, indeed, Johnson & Johnson engaged in 2 misleading and deceptive conduct? 3 A. Yes, that's my opinion. 4 Q. And so is it your opinion that 5 Johnson & Johnson knew that there were health 6 risks associated with a talc product and 7 intentionally did not disclose those? 8 A. It's my opinion that there were 9 risks in the general public. Let me correct 10 that. That there was -- you know, there was 11 peer-reviewed science from various credible 12 sources; there were risks raised about Johnson's 13 Baby Powder and Johnson's Baby Powder products, 14 and that, you know, internally, there are a lot 15 of documents which show that the company was 16 aware of those concerns, and then none of those 17 concerns were disclosed to the public, and, in 18 effect, a very different kind of message was 19 given to the public, which was, you know, the 20 product is completely safe, there's no problem, 21 you know, scientifically proven that it's safe. 22 And so that's the disconnect that I'm referring 23 to in terms of the statements being misleading. 24 Q. I want you to assume for purposes 25 of my question that talc -- that Johnson &</p>
<p style="text-align: right;">Page 55</p> <p>1 understanding as to whether or not there is -- 2 well, let me withdraw the question again. 3 You've indicated, I believe, that 4 risks about inhalation with infants had not been 5 communicated. Is that you're understanding? 6 A. That's my understanding, yes. 7 Q. And is that you're understanding 8 that as of today, J&J still has not communicated 9 any risk associated with inhalation of its 10 product by infants? 11 A. Again, that is my understanding. 12 In terms of the risks that I'm focusing on in my 13 report and the bulk of my report, really are the 14 cancer issue, ovarian cancer, mesothelioma. 15 Q. So we have, you reported health 16 risks associated with talcum powder products in 17 paragraph 9, and when you were asked to review, 18 am I understanding you correctly that when 19 you're talking about health risks there, you're 20 talking about cancer inhalation? 21 A. I think it's most accurate just 22 to say cancer, cancer, yeah. 23 Q. Now, in assessing whether Johnson 24 & Johnson engaged in misleading and deceptive 25 conduct, did you reach a conclusion in this case</p>	<p style="text-align: right;">Page 57</p> <p>1 Johnson talc does not cause ovarian cancer, 2 okay? That's just an assumption I'm asking you 3 to make. Fair? 4 A. Okay, sure. 5 Q. If that assumption is correct 6 that J&J talc does not cause ovarian cancer, 7 what is left of the opinions that you are 8 offering in this case? 9 MS. PARFITT: Objection, form. 10 You may answer. 11 THE WITNESS: I still believe that 12 they did something wrong, that, you know, you 13 have a long history of internal documents 14 talking about these health risks. You know, 15 there's language in those documents like, in -- 16 you know, in the inevitability that talc 17 products are banned, you know, there were -- 18 there was a very specific effort to develop an 19 alternative product, the cornstarch product, 20 over many years, which they product-tested and 21 there's a lot of internal documents that show 22 that the purpose of that cornstarch product was 23 to address the health risks associated with 24 talcum powder, and replace talcum powder. That 25 never happened.</p>

<p style="text-align: right;">Page 58</p> <p>1 And so there are a lot of actions on 2 behalf of the company which I -- that, you know, 3 I think, lend credence to the idea that they 4 were treating these as serious and credible 5 risks internally and having lots of discussions 6 about them, and, yet, a very different story was 7 told to the public through advertising. 8 BY MR. EWALD: 9 Q. And you were talking about 10 potential banning of talc product, there can be 11 a government ban of a product but it doesn't 12 establish that the project is dangerous, 13 correct? 14 MS. PARFITT: Objection, form. 15 THE WITNESS: I mean, I think anything 16 is possible. You know, in -- in my review, you 17 know, it's not just a consideration of some bad 18 things might happen because people are saying 19 bad things. There are very deliberate actions 20 to try to find an alternate source of revenue. 21 And, you know, I think there is a larger story 22 here that, you know, I'm trying to communicate 23 with my report about the importance of talcum 24 powder products to the brand strategy, not just 25 for Johnson's Baby but for Johnson & Johnson</p>	<p style="text-align: right;">Page 60</p> <p>1 risk or concern associated with the product. 2 BY MR. EWALD: 3 Q. You said a couple of different 4 things there, "problem, concern, risk." 5 My initial question is: Am I correct 6 that you are not in a position to assess whether 7 or not there are any potential health risks 8 associated with the use of the talc? 9 MS. PARFITT: Objection. Misstates 10 his testimony. Asked and answered. 11 THE WITNESS: I think, I mean, I 12 just -- you know, what I just said in reviewing 13 those documents, I do believe I'm able to reach 14 a conclusion about what I would call a credible 15 risk or, you know, was the company treating this 16 as a credible risk? Were they taking actions 17 that suggested that they thought there was some 18 kind of potential problem or risk associated 19 with the product? 20 BY MR. EWALD: 21 Q. And when you say "credible risk," 22 are you saying that -- well, what do you mean by 23 "credible risk"? 24 A. Something that had enough 25 substance to spur actions and internal memos and</p>
<p style="text-align: right;">Page 59</p> <p>1 overall, you know, this concept of a golden egg 2 that comes up in a lot of different materials. 3 And so what I read is a lot of 4 internal discussion about concerns of 5 potentially replacing or acknowledging a problem 6 with Johnson's Baby Powder, and none of those 7 concerns, none of those potential risks are 8 communicated. 9 BY MR. EWALD: 10 Q. And we talked about, you're not 11 in a position to assess whether or not there are 12 any, in fact, potential health risks associated 13 with talc products, correct? 14 MS. PARFITT: Objection, misstates his 15 testimony. 16 THE WITNESS: You know, I can review 17 their internal documents which talk about the 18 risks that are -- that have been raised about 19 the product, some of the documents which point 20 to, you know, the possibility of asbestos, and 21 the failure of the quoted-quote "clean mine" 22 approach. I'm drawing on Johnson & Johnson's 23 own words, but I think I can interpret those 24 words to say that they understood that there was 25 some kind of problem or at least some kind of</p>	<p style="text-align: right;">Page 61</p> <p>1 discussions and meetings about it. 2 Q. If there is a risk associated -- 3 if there's a concern that is raised about the 4 safety of a product, would you expect that a 5 good company would investigate whether or not 6 that risk has any credibility? 7 A. Sure. 8 Q. And the fact that they went 9 through that investigation to determine whether 10 or not the concern raised was credible, does 11 that have bearing, in your mind, as to whether 12 or not it's a scientifically viable risk? 13 A. But that's not what they told 14 consumers. They didn't tell consumers, Hey, we 15 looked at some evidence and then we looked at 16 other evidence, and we did our testing and 17 here's what we found. They just said, It's 100 18 percent safe, there's no problem whatsoever, you 19 can trust us. And there's 100 years of 20 advertising that literally are built around the 21 concept of trust, that, this is our trust mark, 22 this is why you should purchase our product 23 because you can trust us more than our 24 competitors. 25 So that statement carried with it</p>

<p style="text-align: right;">Page 62</p> <p>1 enormous gravity for consumers and, frankly, 2 then consumers weren't, I think, given the fair 3 opportunity to really make up their own mind 4 about the potential risks. 5 Q. So you say that it carried 6 enormous gravity for consumers and consumers 7 weren't able to make up their own mind about the 8 risk. What do you rely on for that conclusion? 9 A. Johnson & Johnson's own market 10 research. 11 Q. Point me to market research of 12 Johnson & Johnson that concludes that consumers 13 were not able to make up their own mind about 14 the product risk because of the trust they had 15 in Johnson & Johnson. 16 A. You know, if -- that's verbatim 17 what I said that it misstates my point, that the 18 consumer research from Johnson & Johnson shows 19 that trust in the company is the primary 20 attribute that is leading consumers to purchase 21 Johnson & Johnson products over the competitors. 22 So if you give me a minute, I can find the exact 23 reference. But, for instance, there's a study 24 that they conducted which said, Would you 25 purchase Walmart brand talcum powder versus</p>	<p style="text-align: right;">Page 64</p> <p>1 work that is doing for them, so in that case, it 2 was central to their marketing strategy. 3 BY MR. EWALD: 4 Q. So, I understand your point about 5 the trust aspect in J&J's research. But then, 6 as I understand it, what you just said and what 7 you say in the report, you go a step further and 8 say that the nature of that trust relationship 9 prevented consumers from making up their own 10 mind about the risks associated with the 11 product. Is that your testimony? 12 A. No. I -- 13 MS. PARFITT: Objection. Misstates 14 his testimony. 15 Please, Doctor, you may answer. 16 THE WITNESS: I would -- 17 MR. EWALD: I'm sorry. Michelle, what 18 did you say? 19 MS. PARFITT: I said it misstates his 20 testimony, John. 21 You may answer. 22 BY MR. EWALD: 23 Q. Right. Go ahead. 24 A. Okay. I believe that misstates 25 my testimony, so I don't -- I don't think it's</p>
<p style="text-align: right;">Page 63</p> <p>1 Johnson & Johnson talcum powder. So consumers 2 were twice as likely to purchase Johnson & 3 Johnson talcum powder, and the number one reason 4 they cited is because it's a trustworthy brand 5 because they have trust in the company. 6 And then there's a lot of market 7 research in that same slide deck talking about 8 what does trust mean? Well, trust isn't the 9 product attributes, it's the emotional weight, 10 it's the emotional association, it's the 100 11 years of advertising that we have about the 12 product. 13 Q. Would you agree with that me that 14 any company in the marketing context would love 15 to have the trust of its consumers? 16 MS. PARFITT: Objection, form. 17 THE WITNESS: I would agree that it 18 was a very specific strategy that was incredibly 19 successful for Johnson & Johnson. I mean, they 20 talk explicitly of this is what built a global 21 brand, is this association, the mother-infant 22 bond, the golden egg. This is what built 23 Johnson's Baby, this is what built Johnson & 24 Johnson, this is what allowed us to expand 25 globally. So, that's their own analysis of the</p>	<p style="text-align: right;">Page 65</p> <p>1 the trust that was misleading. I think saying, 2 "Our product is safe, it's 100 percent safe, we 3 know it with certainty," and using language like 4 "it's scientifically proven that it's safe," and 5 so there's no mention of competing risks -- 6 competing evidence, and the point about the 7 trust and the advertising is that statement 8 isn't inert, it's not like the consumers are 9 considering it in some vacuum, they are actually 10 considering it with this legacy that goes back 11 100 years of what they believe to be true about 12 the brand, that this is a very trustworthy 13 brand. And, hey, if they're telling us that 14 it's safe and they've never detected any kind of 15 problem whatsoever, then it must be. And I 16 think there's a direct conflict between that 17 message and what consumers concluded from that 18 message and then what the internal documents 19 show about the nature of the conversation they 20 were really having. 21 Q. Well, when you talk about what 22 consumers concluded from that message, what, if 23 any, data do you rely on for that opinion? 24 A. Again, I would cite Johnson & 25 Johnson's own market research about why</p>

<p style="text-align: right;">Page 66</p> <p>1 consumers are preferring Johnson & Johnson. The</p> <p>2 reason why they're going to Johnson & Johnson is</p> <p>3 because of this trust factor.</p> <p>4 Q. I understand the trust factor,</p> <p>5 but there's that other piece of -- you are</p> <p>6 making opinions about what Johnson & Johnson was</p> <p>7 or was not saying about potential health risk</p> <p>8 associated with talc and the impact that it has</p> <p>9 on consumers. Correct?</p> <p>10 A. Correct. Yeah, yeah, that's</p> <p>11 right.</p> <p>12 Q. And so what, if any, data do you</p> <p>13 rely on for what Johnson & Johnson's conduct and</p> <p>14 statements relating to potential health risk of</p> <p>15 talc had on consumer choice?</p> <p>16 A. Again, I mean, maybe I'm just not</p> <p>17 fully understanding the question, and I</p> <p>18 apologize, but I would come back to Johnson &</p> <p>19 Johnson's own market research data. The data</p> <p>20 are telling you that, Oh, look, the reason why</p> <p>21 people are going to us is because of this trust,</p> <p>22 because we have -- and there's language in there</p> <p>23 that this is our most precious asset. Not</p> <p>24 Johnson's Baby Powder, the trust itself. The</p> <p>25 trust is the most precious asset. This is kind</p>	<p style="text-align: right;">Page 68</p> <p>1 you conduct that you didn't include your report?</p> <p>2 A. Well, I became specifically</p> <p>3 interested in, actually, the current</p> <p>4 communication around talc products and the</p> <p>5 health risks. And, you know, were those -- even</p> <p>6 today, is that potentially misleading consumers?</p> <p>7 And so I conducted at least a pilot study just</p> <p>8 to inform myself about whether there was the</p> <p>9 potential for that relationship to exist.</p> <p>10 Q. What was the nature of this pilot</p> <p>11 study?</p> <p>12 A. Sure. I took just language from</p> <p>13 the facts about talc website. And there's one</p> <p>14 paragraph in particular which talks about, if</p> <p>15 you don't mind, I could just read --</p> <p>16 Q. Yeah.</p> <p>17 A. -- the paragraph that I focused</p> <p>18 on. Okay, so the paragraph was the most recent</p> <p>19 cohort study published --</p> <p>20 Q. I'm sorry. Sorry to interrupt</p> <p>21 you. But, just, it's important for the record,</p> <p>22 that's clear where you're reading from. So can</p> <p>23 you tell me where you're reading from?</p> <p>24 A. Oh, these -- yeah, of course.</p> <p>25 These are the notes that I brought with me.</p>
<p style="text-align: right;">Page 67</p> <p>1 of what's making the whole marketing or</p> <p>2 advertising machine go.</p> <p>3 And so, I mean, and then that is my</p> <p>4 expertise as somebody who is a psychologist and</p> <p>5 somebody who has expertise in market research,</p> <p>6 is that the effect of that kind of messaging</p> <p>7 over a very long time changes the nature of</p> <p>8 people's perceptions. Just like we talked about</p> <p>9 before with the Coke versus Pepsi example,</p> <p>10 right? That brand and that messaging starts to</p> <p>11 mean something. And even though the soda</p> <p>12 doesn't taste any different, people think</p> <p>13 there's a difference. And I think that's also</p> <p>14 true, a similar kind of idea is very much true</p> <p>15 in this case.</p> <p>16 Q. Now, you said before you're an</p> <p>17 experimental psychologist, right?</p> <p>18 A. Correct, yes.</p> <p>19 Q. But you've not conducted any kind</p> <p>20 of empirical tests to support your opinions in</p> <p>21 this case, correct?</p> <p>22 A. Actually, I wouldn't say that</p> <p>23 that's correct. Nothing that I included in my</p> <p>24 report, but I have, yeah.</p> <p>25 Q. Okay. What empirical tests did</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay.</p> <p>2 A. Okay. Yeah.</p> <p>3 Q. And does it say, like, what page</p> <p>4 or paragraph they're taken from?</p> <p>5 A. This is just taken from --</p> <p>6 directly from the website on the Facts About</p> <p>7 Talc. If you like, I can make a note and I know</p> <p>8 about where it's located.</p> <p>9 Q. No, that's fine. I think</p> <p>10 Michelle's gonna give me a copy of that three</p> <p>11 pager during, maybe, the next break, so that's</p> <p>12 fine. Go ahead.</p> <p>13 A. Okay, so there's a paragraph that</p> <p>14 reads:</p> <p>15 "The most recent cohort study</p> <p>16 published in JAMA...</p> <p>17 And I'm just using the abbreviation:</p> <p>18 "...pulled a high number of high</p> <p>19 level epidemiological studies and</p> <p>20 found no statistically significant</p> <p>21 increased risk of ovarian cancer with</p> <p>22 talc use. The study reconfirms that a</p> <p>23 statistical association between</p> <p>24 ovarian cancer and powder users --</p> <p>25 MS. PARFITT: Dr. Newman, she has to</p>

<p style="text-align: right;">Page 70</p> <p>1 take down what you're saying. If you can slow 2 it just a little bit. Okay. 3 THE WITNESS: Sorry, yes. 4 MS. PARFITT: Thank you. 5 THE WITNESS: I'll just pick up "The 6 study reconfirms," okay, my apologies: 7 "The study reconfirms that a 8 statistical association between 9 ovarian cancer and powder users is not 10 found in large prospective cohort 11 studies, although some, but not all 12 case controlled studies do indicate a 13 slight statistical association." 14 And my opinion in reading that was the 15 way in which that, essentially, that there is a 16 statistical association, there is evidence of a 17 statistical association is buried at the end of 18 a paragraph. In a sense, that's difficult, I 19 think, for the average person to actually parse 20 and make sense of. You have to jump back a 21 couple of sentences to know exactly what that's 22 referring to. 23 So in the pilot study that I ran, just 24 trying to inform my own perceptions, I randomly 25 assigned one group of people to read exactly the</p>	<p style="text-align: right;">Page 72</p> <p>1 A. No, I'm not. 2 Q. Okay. And when you say that the 3 change version reduced -- sorry. What was the 4 change version reduced the number of people that 5 trusted the company? 6 A. Or how much they reported 7 trusting the company on a one to five Likert 8 scale, yeah. 9 Q. And what was the difference 10 between the two groups? 11 A. I don't recall exactly the 12 magnitude of -- I mean, it was below a .05 p 13 threshold, but I don't remember the effect size 14 exactly or anything like that. And again, I 15 base my opinions just on my expertise in doing 16 this for a very long time and understanding how 17 consumers respond to information. But with 18 respect to this specific issue, I was just 19 curious, does that check out even in this very 20 kind of nuanced example? 21 Q. Okay. When you go on in 22 paragraph 10 of your report to say that: 23 "The methodology I employ, the 24 purposes of this report use the same 25 objectivity and systematic analysis I</p>
<p style="text-align: right;">Page 71</p> <p>1 information as it appears verbatim on the 2 website, and a different group of people read 3 the same information, except for I changed the 4 phrase "studies do not indicate a slight 5 statistical association" to "studies do not 6 indicate a slight statistical association 7 between talcum use and ovarian cancer." 8 And in this study, like we talked 9 about before, I did not mention Johnson & 10 Johnson at all. I used a hypothetical company 11 name, and then I asked, how much do you trust 12 this company on a Likert scale? And found that 13 even disambiguating that sentence very slightly 14 reduced how much people said they trusted the 15 company. Which suggested to me, again, it's not 16 conclusive. But you're asking, well, did you 17 test any of your ideas about this? It suggested 18 to me that even to this day, burying that kind 19 of information, burying the lead, so to speak, 20 is distorting things for consumers and making it 21 more difficult for them to understand the 22 totality of what's out there. 23 BY MR. EWALD: 24 Q. So are you relying on your pilot 25 study for your opinions in this case?</p>	<p style="text-align: right;">Page 73</p> <p>1 apply in my professional academic 2 career." 3 Isn't it true that in your 4 professional academic career, when you publish 5 articles that are posing hypothetical, you are 6 then backing your conclusion up with 7 experimental analysis? 8 MS. PARFITT: Objection, form. 9 THE WITNESS: There might be a 10 terminology issue here, so maybe we could -- you 11 could say a little bit more about -- I'm not 12 getting the distinction between hypothetical and 13 experimental. 14 BY MR. EWALD: 15 Q. Well, when you are offering a 16 conclusion in the scientific literature -- 17 A. Yes. 18 Q. You've published a number of 19 articles, correct? 20 A. Yes, yeah. 21 Q. And when you're offering a 22 conclusion in the published literature, you 23 support that conclusion with experimental data, 24 correct? 25 A. Correct, yes.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. And you are not doing that here, 2 correct?</p> <p>3 A. Yeah. But what I mean by 4 applying the same systematic analysis is I think 5 that the bedrock of what I'm doing 6 experimentally is starting from a null 7 hypothesis, which is exactly what I did here. 8 And I started with a null hypothesis that there 9 wasn't anything misleading about the marketing 10 communications, that there wasn't any kind of 11 disconnect between what the company was 12 discussing internally and what they were telling 13 consumers. And so just in the same way that I 14 would look for experimental evidence that would 15 lead me to reject that null hypothesis, you 16 know, I was looking: Well, is there evidence in 17 this case that leads me to reject the null 18 hypothesis that there wasn't kind of any 19 disconnect there, any kind of misleading 20 statements.</p> <p>21 Q. Now, in that same paragraph 10, 22 you talk about documents that you requested of 23 counsel relevant to the promotion and sale of 24 Johnson's Baby Powder, and Shower to Shower, 25 right?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Yeah. And I understand from 2 paragraph 10 what you asked plaintiff's counsel 3 to give you on the marketing materials and 4 communications.</p> <p>5 What, if anything, did you ask 6 plaintiff's counsel to give you as it related to 7 internal Johnson & Johnson documents that relate 8 to potential health effects associated with the 9 use of talc?</p> <p>10 A. I was -- that wasn't really a 11 focus of my inquiry. I was looking at marketing 12 communications, which -- I'm sorry, internal 13 documents which discussed marketing issues. 14 Now, a number of the documents that I reviewed 15 did discuss marketing issues in the context of 16 health concerns. So, for instance, when you 17 know they're talking about developing a 18 cornstarch product, there are documents which 19 talk about developing that cornstarch product 20 specifically to address the health concerns 21 associated with talc. So that would be an 22 instance in which a document mentioned both 23 things.</p> <p>24 Q. Okay. So if I'm understanding 25 you correctly, to the extent that there are</p>
<p style="text-align: right;">Page 75</p> <p>1 A. That's right, yeah.</p> <p>2 Q. You talk about marketing 3 materials and communications directed to 4 consumers, corporate documents discussing these 5 products, testimony from former employees of 6 Johnson & Johnson, publicly available 7 information, and the peer-reviewed scientific 8 literature relevant to talking about our use, 9 right?</p> <p>10 A. Correct, yes.</p> <p>11 Q. What about documents related to 12 potential health risk associated with talc? How 13 did you get your hand on those?</p> <p>14 A. I searched Google Scholar.</p> <p>15 Q. Okay. But when we're talking 16 about -- what about -- that's a fair question. 17 And on that one, what did you search 18 Google Scholar for?</p> <p>19 A. I don't remember the exact search 20 terms, but talcum powder, cancer, ovarian 21 cancer.</p> <p>22 Q. Or internal Johnson & Johnson 23 documents, though, not something that would be 24 on Google Scholar, correct?</p> <p>25 A. Yeah. Correct, yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 documents from Johnson & Johnson that you 2 reviewed in connection with your opinions that 3 relate to potential health risks associated with 4 talc, you had those in your possession because 5 they also relate to marketing issues?</p> <p>6 A. Correct, yeah.</p> <p>7 Q. So, for example, you made 8 reference earlier to the top asbestos 9 controversies referenced in a document or two 10 that you reviewed.</p> <p>11 You didn't ask counsel for documents 12 that gave a full picture on how the history of 13 that top asbestos controversy played out?</p> <p>14 MS. PARFITT: Objection, form.</p> <p>15 THE WITNESS: I wouldn't agree with 16 that. I mean, again, I was really restricted in 17 looking or -- sorry, I restricted my analysis in 18 looking at marketing issues. And so if -- it 19 was getting into testing and internal testing 20 and external testing, that was beyond my 21 expertise and beyond what I felt like I was able 22 to properly evaluate. So I'm evaluating at the 23 level of the word and the internal discussions 24 that Johnson & Johnson is having about these 25 controversies with respect to their products and</p>

<p style="text-align: right;">Page 78</p> <p>1 various types of strategy decisions that they 2 seem to be making. 3 BY MR. EWALD: 4 Q. So if we look at 10(e) as an 5 Edward, the: 6 "Product Risks. Assessing the 7 timing and nature of health concerns 8 regarding talcum powders by consulting 9 publicly available information in 10 scientific literature." 11 Did I read that correctly? 12 A. Yeah. 13 Q. And so explain to me what you 14 mean by that in 10(e). 15 A. Basically, my strategy is what 16 would somebody be able to find out if -- what 17 would they be able to find out about the product 18 and what science is out there? I mean, I 19 recognize that most consumers do not have the 20 same scientific training that I do, but I'm also 21 not an epidemiologist. And so if they were to 22 go on to Google Scholar and start reading 23 studies, what kinds of things would they learn? 24 Or if they were to consult other types of 25 information, what would they learn about those</p>	<p style="text-align: right;">Page 80</p> <p>1 record now. 2 MS. PARFITT: We'll take like five 3 minutes, everyone. All right? 4 -- RECESS TAKEN AT 11:26 A.M. 5 -- RESUME AT 11:38 A.M. 6 BY MR. EWALD: 7 Q. Dr. Newman, one other question 8 for now at least on materials that you reviewed, 9 I saw on your updated list some testimony with 10 Dr. Friedenfelds. Does that sound familiar? 11 A. Yes, yes. 12 Q. And why did you review her 13 testimony? 14 A. I believe -- I became aware that 15 there was somebody testifying too broadly to 16 some of the marketing issues. And so I was just 17 curious about what they were saying and their 18 testimony. 19 Q. Are you relying on any of the 20 opinions that you -- from Dr. Friedenfelds, that 21 you reviewed in her testimony for your opinions? 22 A. No, not at all. 23 Q. On paragraph 11, carry over from 24 4 to 5, you cite to a Matthew Rabin 1998 25 article.</p>
<p style="text-align: right;">Page 79</p> <p>1 risks? So that's the level at which I'm 2 interacting with it. 3 Q. At 11 you say: 4 "In forming my opinion, I 5 consider the totality of evidence." 6 What do you mean by that? 7 A. Well, I mean, I tried to take 8 into account everything that, that I was looking 9 at, that I wanted to understand, well, the full 10 scope of the things that I was seeing about 11 Johnson & Johnson, what they were saying, what 12 was being said in the public, what the 13 advertising was saying in trying to understand 14 how those different timelines or those different 15 kind of streams of information related to one 16 another. So kind of trying to get a more global 17 perspective about what was happening broadly, 18 both within the company and externally, with 19 respect solely to the marketing issues and 20 marketing communication. 21 MS. PARFITT: John, when you get to a 22 comfortable place, let us know. We've gone -- 23 it's almost 11:30 and beyond, but you let us 24 know when you get to a break. 25 MR. EWALD: Yeah. Let's go off the</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Yeah. 2 Q. Are you, lack of a better phrase, 3 are you relying on Rabin as a general 4 proposition on the approach you're taking here? 5 A. Yeah, yeah. That Rabin article 6 is a very famous one, which connects kind of 7 psychological bias to economic principles. And 8 so it's kind of a landmark paper where he 9 outlines and says, Hey, people aren't so 10 rational when it comes to consumer decision 11 making. And so here's a bunch of principles 12 from psychology that, as an economist, I think 13 have an important role in the market. 14 Q. When you were talking - on the 15 next page in paragraph 17 and 18 - about the 16 cornstarch product, what opinion are you 17 offering as to how cornstarch impacted, if at 18 all, the, in your view, misleading, the type of 19 conduct that J&J communicated to consumers? 20 MS. PARFITT: Objection, form. 21 You may answer. 22 THE WITNESS: Okay, yeah. I think it 23 speaks to the strategy of the company. In the 24 documents that I reference relevant to 25 cornstarch, there are a lot of communications</p>

<p style="text-align: right;">Page 82</p> <p>1 about why they're developing this cornstarch 2 product. And in multiple documents, across 3 multiple years, just I'm paraphrasing here, is 4 basically there are concerns about talcum powder 5 and we need a replacement. 6 And then there's a lot of test 7 marketing to make sure that it's going to be an 8 effective replacement. They go through that, 9 they confirm there's a lot of powder forecasts 10 which predict, hey, in the future, consumers 11 aren't going to be buying talc products because 12 of these health concerns. Cornstarch is the way 13 of the future. And then it's informative to my 14 opinions because that decision to replace talc 15 with cornstarch is never made. The products are 16 just launched side by side and sold 17 concurrently. 18 BY MR. EWALD: 19 Q. So is it your opinion that even 20 though Johnson & Johnson had an effective 21 replacement in the market for talc powder, that 22 it nevertheless continued to market talc powder 23 knowing that there were risks of cancer 24 associated with its use? 25 A. I'm taking it as evidence that,</p>	<p style="text-align: right;">Page 84</p> <p>1 but I should say that is one area where I made 2 numerous requests of documents over a very 3 specific time period. We're talking about, I 4 believe it's like 1986, where, you know, a 5 company as large as Johnson & Johnson, I imagine 6 that there was some kind of, you know, internal 7 document, internal communication, which said, 8 hey, we're not going with this replacement 9 strategy. We're just going to sell both 10 products. I never encountered such document. 11 And so because of that, I never found 12 any kind of explicit justification for why the 13 two products would be sold side by side. I will 14 say that in some of the powder -- the powder 15 forecasts that they're doing around this time, 16 1985, 1986, there's a lengthy discussion, 17 basically, about the strategy and about 18 competitive advantage. And the argument, 19 essentially - and we can talk about those 20 specific documents - but essentially, the 21 argument is, look, we -- we own talc. We own 22 the talc market. We are the talc product. But 23 because cornstarch is a consumer product, sorry, 24 I meant a consumable product - I might be 25 getting the exact designation wrong, but we can</p>
<p style="text-align: right;">Page 83</p> <p>1 you know, we talked before about the term 2 credible, that they were taking it seriously, 3 that they were taking a lot of actions at, what 4 I'm presuming, is great expense to develop and 5 test mark a replacement product. To the extent 6 that they're debating how are we going to 7 replace it? Can we replace it without consumers 8 knowing the difference, et cetera, et cetera. 9 They even develop advertising that they're going 10 to send to their distributors, which says, hey, 11 this is a change for the better. 12 And so that, to me, communicates that 13 they were taking those health concerns very 14 seriously and taking actions in response to 15 that. 16 Q. So having reviewed those 17 documents and concluding that Johnson & Johnson 18 was taking the health concerns with the product 19 seriously, what is your opinion on why they 20 continue to market the talc product even though 21 they were supposedly taking the concern 22 seriously? 23 A. I think that is a big question in 24 this case that there are -- I can cite some 25 documents which I think provide some insight,</p>	<p style="text-align: right;">Page 85</p> <p>1 look at it - we have no ownership. And so 2 basically, it's going to be fair game for all of 3 our competitors. 4 And so this presents a real challenge 5 for us. And we either have to find out a way to 6 elevate this cornstarch product so that we can 7 do something different with it, or who knows? 8 And so it's my -- that, and then I think, 9 coupled with all the discussions we were having 10 before about this idea of a golden egg and that 11 Johnson's Baby Powder is the first to consumer 12 product, and there's a lot of internal 13 discussion about even, like, these PR documents, 14 anticipating, well, what are consumers gonna 15 think if we replace talc with cornstarch? What 16 are they going to think about us? And are we 17 admitting that there's a health risk? 18 And so, you know, that, to me, again, 19 signals that those kinds of issues were very top 20 of mind for a company. And all I can conclude 21 is that ultimately somebody or a group of 22 somebodies with power said, you know what? The 23 risks don't outweigh the benefits, even though 24 we were planning to replace it. Let's go ahead, 25 because either we're not going to be able to</p>

<p style="text-align: right;">Page 86</p> <p>1 maintain our share of the market or because 2 we're going to be opening up ourselves to these 3 types of criticisms. 4 So again, I can't point to any 5 specific document which shows me that decision 6 making, but then -- that has been a continued 7 source of kind of frustration on my part of not 8 being able to find documents which communicate 9 that change of strategy. 10 Q. Well, when you have a gap in the 11 historical record such as you have identified, 12 is one possibility that you don't have enough 13 information to offer an opinion to a reasonable 14 degree, professional certainty, correct? 15 MS. PARFITT: Objection. Misstates 16 him testimony. 17 THE WITNESS: No, I wouldn't say that. 18 I mean, what happened is what happened, which is 19 that there are documents which clearly show that 20 they were going with this replacement strategy, 21 and then that replacement strategy never 22 happened. What I'm not able to find in the 23 record is some communication of that decision. 24 And I just find it, frankly, implausible that a 25 company as large as Johnson & Johnson, with as</p>	<p style="text-align: right;">Page 88</p> <p>1 that there's never, I can never find a place in 2 black and white that they say, hey, we were -- I 3 should clarify, there are lots of places that I 4 believe in black and white say our plan is to 5 replace talc with cornstarch leading up to 1986, 6 and then that never happens. 7 And so I never find evidence of the 8 communication which directs the various 9 marketing departments of this change. You know, 10 for example, there are advertisements which were 11 developed, which never seem to be released, 12 which say, like literally a change for the 13 better, announcing to retailers that this is 14 going to be a better product. We're changing to 15 a better product. But those advertisements 16 are -- you know, so they go through all of the 17 work of producing these advertisements but then 18 those advertisements are never distributed and 19 the change never happens. 20 So again, I don't think the facts are 21 in dispute about a replacement strategy and then 22 a different strategy. Just the thing that is 23 very puzzling to me is how does that happen. 24 Even just from kind of a corporate governance 25 and operations standpoint, how do you direct as</p>
<p style="text-align: right;">Page 87</p> <p>1 many varied departments, you'd have to send out 2 some kind of communication to say, hey, we're 3 doing something different here. I never found 4 any of those documents. It's not -- it doesn't 5 give me question marks about what actually 6 happened. It just is curious to me that there's 7 not any kind of discussion of that change since 8 a change took place. 9 BY MR. EWALD: 10 Q. Well, I understand the part about 11 it is a fact that in the eighties, talc was not 12 replaced, but on the market at the same time as 13 cornstarch. But on the factual question of why 14 that decision was made, I heard you say that 15 basically the only opinion you can really reach 16 is that there was a decision made that the risk 17 didn't outweigh the benefits, right? 18 MS. PARFITT: Objection. Misstates 19 his testimony. 20 THE WITNESS: Yeah. Again, there are 21 documents which talk about their competitive 22 strategy and what's defensible from a marketing 23 standpoint. And so I think that that's more 24 than just a hunch or a guess. It's kind of 25 outlining the logic of the decision. It's just</p>	<p style="text-align: right;">Page 89</p> <p>1 many people as were needed, that, hey, we're 2 still going to continue to sell talc powder. 3 BY MR. EWALD: 4 Q. So is it your opinion that 5 Johnson & Johnson decided in the eighties that, 6 Yeah, there might be a risk that selling the 7 talc product can cause cancer, and, yeah, we 8 have an effective replacement, but we're gonna 9 go ahead and market talc still anyway. Is that 10 your opinion? 11 A. No, I -- 12 MS. PARFITT: Objection, misstates his 13 opinion. 14 THE WITNESS: Again, I would disagree 15 with that. I think what I'm able to conclude, 16 looking at the documents that I reviewed, is 17 that the strategy for why the cornstarch product 18 was being developed was very clear as a 19 replacement. And then we're able to see after 20 1986 that that replacement doesn't happen. I 21 don't know -- I don't know what that calculus 22 was. Again, I've offered some suggestions from 23 documents. One, there's the idea of what 24 Johnson's Baby Powder means to the brand, and 25 how central it is to the brand. There are</p>

<p style="text-align: right;">Page 90</p> <p>1 documents which discuss that.</p> <p>2 Then there's this idea about</p> <p>3 competitive strategy, and the fact that they</p> <p>4 can, quote-unquote, own talc but not own</p> <p>5 cornstarch. And so that leads me to think that</p> <p>6 because it's mentioned in those documents that</p> <p>7 that factored into the decision making, but I</p> <p>8 don't know beyond that, exactly, how that</p> <p>9 decision was made.</p> <p>10 BY MR. EWALD:</p> <p>11 Q. But you are concluding that</p> <p>12 Johnson & Johnson, over the years, with its talc</p> <p>13 marketing, engaged in misleading and deceptive</p> <p>14 conduct, correct?</p> <p>15 A. Correct. Correct. And so, for</p> <p>16 example, I think it is misleading to</p> <p>17 purposefully develop a replacement product</p> <p>18 because of health risks, and then never mention</p> <p>19 any of those health risks to consumers. For --</p> <p>20 Q. Well --</p> <p>21 MS. PARFITT: Wait, wait. He's not</p> <p>22 done, John. I'm sorry.</p> <p>23 MR. EWALD: I know. I wasn't -- go,</p> <p>24 let him go.</p> <p>25 MS. PARFITT: You may complete your</p>	<p style="text-align: right;">Page 92</p> <p>1 MS. PARFITT: Objection.</p> <p>2 You may answer.</p> <p>3 THE WITNESS: I believe that misstates</p> <p>4 the facts of what happened. So you have a brief</p> <p>5 period of time, I believe they called it Formula</p> <p>6 31, that they say, Okay, well, maybe we can win</p> <p>7 on absorbency and we can make it a more</p> <p>8 absorbent powder. And that doesn't work.</p> <p>9 And then there are concerns that</p> <p>10 arise, 1970, 1973, about -- specifically about</p> <p>11 asbestos and about health concerns related to</p> <p>12 talc products. So this is like what I cite in</p> <p>13 paragraph 50, for example. And so at that</p> <p>14 point, then they say, okay, well, maybe we</p> <p>15 should go back to this cornstarch idea because</p> <p>16 it could be a replacement, because there are</p> <p>17 these health concerns about talc. And then from</p> <p>18 1973 through the eighties, they develop a</p> <p>19 product and they obtain patents.</p> <p>20 And I would disagree with your</p> <p>21 characterization that they're considering it.</p> <p>22 They're not just considering it. It's over a</p> <p>23 decade. They're investing a lot of money and</p> <p>24 making a lot of plans into the strategy that:</p> <p>25 We're going to replace this product. There are</p>
<p style="text-align: right;">Page 91</p> <p>1 sentence, Dr. Newman.</p> <p>2 THE WITNESS: Okay, yeah. So I do</p> <p>3 think it's misleading to not reflect the</p> <p>4 decision making to -- to consumers. Especially</p> <p>5 when you have things like these -- when they're</p> <p>6 doing studies in New Orleans, and I believe</p> <p>7 another one was in Indiana, test marketing the</p> <p>8 feasibility of cornstarch, and you have</p> <p>9 consumers, even at that point saying, that they</p> <p>10 would rather purchase a cornstarch product. And</p> <p>11 so I find that very puzzling.</p> <p>12 BY MR. EWALD:</p> <p>13 Q. So, well, you do acknowledge in</p> <p>14 your report that there was a first phase of the</p> <p>15 cornstarch product development that was not</p> <p>16 geared towards it being a replacement, correct?</p> <p>17 A. That's correct, yes.</p> <p>18 Q. Okay. And so when you're saying</p> <p>19 that Johnson & Johnson should have disclosed to</p> <p>20 consumers that it considered a cornstarch</p> <p>21 alternative first to be side by side with talc,</p> <p>22 then to replace it, and ended up going side by</p> <p>23 side, but should have said that we think there</p> <p>24 are health concerns.</p> <p>25 A. I think --</p>	<p style="text-align: right;">Page 93</p> <p>1 problems with the product we have in market.</p> <p>2 We've got to come up with a new product, and</p> <p>3 we're going to replace it, and how best to do</p> <p>4 that.</p> <p>5 And so I wouldn't say that's just like</p> <p>6 they're kind of weighing options like in a</p> <p>7 boardroom. I mean, they're taking a lot of very</p> <p>8 concrete actions over a long period of time.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. Okay. And to your mind, those</p> <p>11 concrete actions over a long period of time,</p> <p>12 including things like patents and money invested</p> <p>13 in alternatives, means that Johnson & Johnson</p> <p>14 considered the cancer threat to be credible?</p> <p>15 A. Yes. I think they took it --</p> <p>16 they were taking it seriously, yeah, yeah.</p> <p>17 Q. And so then, if I'm hearing you</p> <p>18 correctly, what came out of that process is</p> <p>19 Johnson & Johnson knew they had an effective</p> <p>20 replacement for talc in cornstarch, correct?</p> <p>21 A. Correct, yes.</p> <p>22 Q. They had marketing -- you know,</p> <p>23 in the field, materials -- sorry. They had</p> <p>24 studies that in the field, that gave back</p> <p>25 feedback that customers actually preferred the</p>

<p style="text-align: right;">Page 94</p> <p>1 cornstarch to the talc. Correct?</p> <p>2 A. Correct, yes.</p> <p>3 Q. And that given those first two</p> <p>4 and the importance, as you say, of the trust and</p> <p>5 the golden egg importance of the talc franchise,</p> <p>6 right? That's something that went into the</p> <p>7 thinking, correct?</p> <p>8 A. And I would add a fourth bullet</p> <p>9 point there, which is that the cornstarch was</p> <p>10 developed because of the health concerns. So,</p> <p>11 like, you know, in 54, in paragraph 54, they</p> <p>12 consult with a market research company to do the</p> <p>13 testing in Wayne, Indiana, for the cornstarch</p> <p>14 product. And they say:</p> <p>15 "In view of possible government</p> <p>16 legislation banning the cosmetic use</p> <p>17 of talcum powder, the brand is test</p> <p>18 marketing Johnson's Baby Powder with</p> <p>19 cornstarch as a possible product</p> <p>20 replacement formula."</p> <p>21 And that kind of language about this</p> <p>22 is a replacement, how are we going to replace</p> <p>23 it? What are consumers going to think about it?</p> <p>24 Is this a viable replacement? And connecting it</p> <p>25 to the health issues, I think, is really central</p>	<p style="text-align: right;">Page 96</p> <p>1 I think that's very important to understand</p> <p>2 about, Well, did Johnson & Johnson ever take</p> <p>3 these health concerns seriously? And, yeah, it</p> <p>4 looks like there's a lot of evidence that they</p> <p>5 did. And yet none of those -- none of that</p> <p>6 gravity was ever communicated.</p> <p>7 Q. Go to paragraph 20.</p> <p>8 A. Sure.</p> <p>9 Q. Let's jump ahead to paragraph 45.</p> <p>10 A. Okay.</p> <p>11 Q. And you say:</p> <p>12 "By as early as 1966, Johnson &</p> <p>13 Johnson was aware of health risks</p> <p>14 associated with the use of talcum</p> <p>15 powder products. In response to these</p> <p>16 safety concerns, Johnson & Johnson</p> <p>17 began developing a replacement powder</p> <p>18 that was made of cornstarch instead of</p> <p>19 talc."</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes, that's right.</p> <p>22 Q. And you cited in paragraph 45 a</p> <p>23 1966 internal memo, correct?</p> <p>24 A. Yes, that's right.</p> <p>25 Q. I am going to mark what I think</p>
<p style="text-align: right;">Page 95</p> <p>1 here and is really central to that argument.</p> <p>2 It's not just that it's a viable product because</p> <p>3 it's a viable product. It's a viable product</p> <p>4 because it addresses the health risks and the</p> <p>5 health concerns about talc.</p> <p>6 Q. And so in your opinion, to a</p> <p>7 professional degree of certainty, is that</p> <p>8 Johnson & Johnson in the eighties decided, Never</p> <p>9 mind, we're going to continue marketing talc</p> <p>10 even though we think there's a credible risk of</p> <p>11 cancer with its use and even though we have an</p> <p>12 effective replacement that our market data</p> <p>13 suggests consumers prefer.</p> <p>14 A. Yeah. In short, yes. I mean, I</p> <p>15 would parse that a little bit, which is part of</p> <p>16 that is just fact. That's just what happened.</p> <p>17 And then what I think lends a lot of support to</p> <p>18 the idea that these were -- they were credible,</p> <p>19 that they were taking it seriously, is all of</p> <p>20 the actions that they're taking ahead of time</p> <p>21 and that they're framing those actions in the</p> <p>22 context of health concerns, right? It's that</p> <p>23 those documents are mentioning health concerns</p> <p>24 alongside the development of cornstarch product.</p> <p>25 That's why we're engaging in this activity. And</p>	<p style="text-align: right;">Page 97</p> <p>1 you're referring to as Exhibit 6, I believe.</p> <p>2 For the record, this is a June 17, 1966 memo.</p> <p>3 It has a Bates number at the bottom right of J&J</p> <p>4 000235850?</p> <p>5 EXHIBIT NO. 6: June 17, 1966 memo.</p> <p>6 J&J 000235850. To Dr. Hildick-Smith,</p> <p>7 Subject: Johnson's Baby Powder Talc</p> <p>8 Aspiration. June 17, 1966.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. EWALD:</p> <p>11 Q. Doctor, is this the document that</p> <p>12 you're referring to in paragraph 45?</p> <p>13 A. Yes, it is.</p> <p>14 Q. So, setting the scene here a</p> <p>15 little bit, we talked about internal Johnson &</p> <p>16 Johnson document, and the subject line, it's</p> <p>17 Johnson's Baby Powder, Talc Aspiration, right?</p> <p>18 A. Yep.</p> <p>19 Q. This is not about cancer,</p> <p>20 correct.</p> <p>21 A. Understood. Yes.</p> <p>22 Q. So:</p> <p>23 "Reference is made to the</p> <p>24 attached note from Mr. J. Dettre</p> <p>25 forwarding an article by Drs. Hughes</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 and Kalmer which appeared in June 1966</p> <p>2 American Journal of Diseases of</p> <p>3 Children.</p> <p>4 Baby Powder represents the</p> <p>5 cornerstone of our baby products</p> <p>6 franchise."</p> <p>7 That's something that you've mentioned</p> <p>8 before, right, Doctor?</p> <p>9 A. Yes.</p> <p>10 Q. Okay:</p> <p>11 "In addition, we have a large</p> <p>12 investment in talc mine."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And so you do quote that in your</p> <p>16 report, and you put that, I believe, in your</p> <p>17 Appendix 1 timeline.</p> <p>18 So what importance does the statement</p> <p>19 "We have a large investment in talc mine" have</p> <p>20 to your opinions?</p> <p>21 A. Well, I think that it clearly</p> <p>22 connects the safety concern to the economic</p> <p>23 concern, which you see -- why I include it in</p> <p>24 this section about cornstarch development is</p> <p>25 because in the documents that discuss the</p>	<p style="text-align: right;">Page 100</p> <p>1 reading that paragraph. You know, I'm</p> <p>2 paraphrasing, I read this saying, this article</p> <p>3 just came out which says that people should stop</p> <p>4 using talcum powder because there's a health</p> <p>5 risk. Talc powder is the cornerstone of our</p> <p>6 franchise, and we have a large investment in</p> <p>7 talc mine. We better figure out what to do</p> <p>8 about it. And so, I mean, I don't know how to</p> <p>9 answer that other than just like, the person</p> <p>10 who's writing this is directly connecting those</p> <p>11 ideas.</p> <p>12 Q. Okay. And so, by the way, are</p> <p>13 you suggesting or are you offering the opinion</p> <p>14 rather, that this type of economic analysis to</p> <p>15 safety issues is something that is pervasive</p> <p>16 throughout the entire time period when J&J's</p> <p>17 marketing its talc.</p> <p>18 A. I mean, in -- I'm able to -- I</p> <p>19 would say that I observed it over a very long</p> <p>20 time period. I would say that there are many</p> <p>21 documents, especially from this period of, you</p> <p>22 know, the sixties through the eighties, which</p> <p>23 continually make a link between different</p> <p>24 strategies they could take with talc powder and</p> <p>25 replacement products and what would be the</p>
<p style="text-align: right;">Page 99</p> <p>1 cornstarch replacement, they're discussing it in</p> <p>2 the context of what are the economic</p> <p>3 repercussions? And this document does a very</p> <p>4 similar kind of thing. Hey, there's a health</p> <p>5 concern about our product. What's going to be</p> <p>6 the economic fallout? But one problem for us is</p> <p>7 that we have a large investment in talc mine.</p> <p>8 And so we can't just stop selling talc. Let's</p> <p>9 figure out what we're going to do about it.</p> <p>10 And so to me, it's very informative</p> <p>11 because it starts to connect these ideas, which,</p> <p>12 you know, quite frankly, is different than the</p> <p>13 credo of the company. The credo isn't like,</p> <p>14 your health and safety is number one, unless it</p> <p>15 has negative economic repercussions for us.</p> <p>16 It's just health and safety is number one. And</p> <p>17 that quote, even to me, says, well, look, our</p> <p>18 interests are more complicated than that. It's</p> <p>19 not just health and safety, it's health and</p> <p>20 safety and the fact that we own a talc mine.</p> <p>21 Q. Well, are you -- what evidence do</p> <p>22 you have that Johnson & Johnson's response to</p> <p>23 this talc aspiration issue was tied to a concern</p> <p>24 over his investment in the talc mine.</p> <p>25 A. Well, I mean, that's just how I'm</p>	<p style="text-align: right;">Page 101</p> <p>1 economic repercussions of doing so. So that's</p> <p>2 how I fundamentally interpret all those</p> <p>3 documents. And so, you know, at least for those</p> <p>4 two decades or so, you see a strong connection</p> <p>5 between those ideas.</p> <p>6 Q. Okay. And so this is the kind of</p> <p>7 thing, in your mind, this kind of risk</p> <p>8 articulated in the 1966 document is the kind of</p> <p>9 risk that could threaten the golden egg?</p> <p>10 A. Yeah, I mean, that's like a word</p> <p>11 like "cornerstone of our baby product</p> <p>12 franchise," that's how I would interpret that</p> <p>13 phrase, yeah.</p> <p>14 Q. Okay. And so then your criticism</p> <p>15 of Johnson & Johnson for this talc aspiration</p> <p>16 risk that's identified in this 1966 document is</p> <p>17 they don't tell consumers about it?</p> <p>18 MS. PARFITT: Objection, form.</p> <p>19 THE WITNESS: Yeah, no, I'm not</p> <p>20 hanging my opinion on any one single document.</p> <p>21 And we kind of talked before about the totality,</p> <p>22 you know, looking at all of the documents in sum</p> <p>23 that you see this document and then you see</p> <p>24 another, you know, I could count them up, but</p> <p>25 let's just say another ten or a dozen documents</p>

<p style="text-align: right;">Page 102</p> <p>1 afterwards which make a similar kind of argument 2 about different types of health issues. So, you 3 know, aspiration risk turns out not to be 4 something that the company is concerned about, 5 but then new concerns get raised around 6 asbestos; first asbestos and lung cancer, and 7 then asbestos and ovarian cancer. And those are 8 continually connected then to these replacement 9 products. So I would say that it's indicative 10 of a strategy or an approach that is consistent 11 across time, but it's not that -- that it all 12 boils down to this one issue of aspiration in my 13 mind. 14 BY MR. EWALD: 15 Q. Well, did you say that the 16 company was not concerned about the aspiration 17 risk? Is that what you said? 18 MS. PARFITT: Objection, misstates his 19 testimony. 20 THE WITNESS: No, I -- 21 BY MR. EWALD: 22 Q. That's literally what he said. 23 A. No, I don't say that they're not 24 concerned about it. They are concerned, but the 25 way in which they're concerned about it -- look,</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Agreed. Yes, absolutely. 2 Q. And so they're saying there's a 3 problem here and we're going to look into it to 4 see whether there's a basis for it, right? 5 MS. PARFITT: Objection, misstates 6 testimony. 7 THE WITNESS: Again, I would just add 8 to that, there's a problem here that might 9 really hurt our wallet and we should look into 10 it. And I think that's the larger point. 11 That's the important point. 12 BY MR. EWALD: 13 Q. Well, and you're drawing that 14 because the paragraph that you referenced comes 15 before the "Would it be possible for us to 16 initiate basic work"? It's a structural memo, 17 intuition of importance because it comes first? 18 MS. PARFITT: Objection. Misstates hi 19 testimony. He's talking about the totality of 20 the documents. 21 THE WITNESS: Yeah, I mean, again, I 22 don't want to hang it all on one document. I 23 think this document is indicative of a larger 24 pattern, is representative of several other 25 documents that you see over this time period of,</p>
<p style="text-align: right;">Page 103</p> <p>1 I mean the company could said, Wow, this might 2 be a real problem. I hope babies aren't choking 3 on this stuff. But that's not what the first 4 paragraph says. The first paragraph says, Look, 5 we have a financial interest in this mine, we 6 have a financial interest to this product. 7 And I think, importantly, drawing it 8 back to the larger argument, that's not what 9 they're telling consumers. Over 100 years 10 they're saying, Your health and safety are our 11 number one priority. You can trust us. The 12 reason why you're going to come to Johnson & 13 Johnson is because of this trust mark that we 14 put on every product." And a paragraph like 15 that seems to run counter, in my view, to that 16 very idea. 17 Q. So you talk about the first 18 paragraph after the quote. The second paragraph 19 says: 20 "Would it be possible for us to 21 initiate basic work to explore this 22 phenomenon, either obtain data to 23 refute this problem or develop 24 mechanisms to reduce the hazard." 25 That's what Mr. Steinberg says, right?</p>	<p style="text-align: right;">Page 105</p> <p>1 as I said before, connecting a safety issue to 2 an economic concern. And I don't know what the 3 speaker, you know, what Steinberg, you know, was 4 thinking, I couldn't possibly know that or where 5 he wanted to place emphasis. 6 But you know, in black and white, the 7 connection between those ideas is there, and in 8 directing other folks at Johnson & Johnson why 9 we should be concerned about this, to me, I read 10 that as we should be concerned about this 11 because it has an economic impact. And you see 12 that same kind of idea in several other 13 documents. 14 BY MR. EWALD: 15 Q. Okay, so you may not be able to 16 get into Mr. Steinberg's head, but you are able 17 to conclude or figure out whether or not any 18 changes were made to the product or its labeling 19 to address the aspiration risk, correct? 20 MS. PARFITT: Objection. Misstates 21 his testimony. In fact, I'm going to broad -- 22 I'm not sure I even understand it. 23 Doctor, if you can. 24 THE WITNESS: I got a little bit mixed 25 up here. Can you just repeat that?</p>

<p style="text-align: right;">Page 106</p> <p>1 BY MR. EWALD:</p> <p>2 Q. Sure. Whatever Mr. Steinberg was</p> <p>3 thinking in 1966, you, Dr. Newman, have the</p> <p>4 capability to figure out whether or not any</p> <p>5 changes were made to the Johnson's talc</p> <p>6 products, labels and/or packaging because of</p> <p>7 those concerns, right?</p> <p>8 A. Yeah. Yes, I am. Yeah.</p> <p>9 Q. And your position is that nothing</p> <p>10 was done?</p> <p>11 A. Well, I mean, that wasn't my --</p> <p>12 no, that's not my understanding exactly. I</p> <p>13 thought there was a modification to the cap or</p> <p>14 something like that, which changed it. But I</p> <p>15 mean, again, the focus of my inquiry was around</p> <p>16 cancer, largely. And so I focused there. I</p> <p>17 find this document informative for the reasons</p> <p>18 that we talked about already, but, you know,</p> <p>19 yeah.</p> <p>20 Q. Well, when I asked you earlier</p> <p>21 about it, before the break, you didn't mention</p> <p>22 anything about a modification of a cap.</p> <p>23 Did you do further research over the</p> <p>24 break to remind yourself of that?</p> <p>25 A. No --</p>	<p style="text-align: right;">Page 108</p> <p>1 Frederick Koberna deposition about this</p> <p>2 aspiration risk issue?</p> <p>3 A. I do recall that, yes.</p> <p>4 Q. So let's look at -- here, we have</p> <p>5 from your reliance materials, it's the July 2021</p> <p>6 deposition of Frederick Koberna. And if we go</p> <p>7 to --</p> <p>8 MS. PARFITT: John, if you will, I'll</p> <p>9 grab that deposition. We should have it. I'm</p> <p>10 just looking quickly through the index to try to</p> <p>11 find out what --</p> <p>12 MR. EWALD: Sure.</p> <p>13 MS. PARFITT: -- bucket it's in. Let</p> <p>14 me -- give me one moment so I can do that.</p> <p>15 MR. EWALD: Sure.</p> <p>16 MS. PARFITT: You won't have to,</p> <p>17 maybe, show as much as you wish.</p> <p>18 MR. EWALD: Take your time.</p> <p>19 MS. PARFITT: John, just give us a</p> <p>20 moment. Fifty-four and 55. Okay, John, just so</p> <p>21 you know, I'm just handing him the volume that</p> <p>22 has the depositions. Okay.</p> <p>23 MR. EWALD: Great. Thank you. And so</p> <p>24 this is the -- yeah, this is the first day of</p> <p>25 deposition. I'm looking at --</p>
<p style="text-align: right;">Page 107</p> <p>1 MS. PARFITT: Objection.</p> <p>2 THE WITNESS: Not at all. No, I just</p> <p>3 used the restroom.</p> <p>4 BY MR. EWALD:</p> <p>5 Q. Okay. It could be a real</p> <p>6 generator of ideas.</p> <p>7 A. No, I think this is really</p> <p>8 important. If I didn't say something -- I mean,</p> <p>9 I do have that knowledge. If I didn't say</p> <p>10 something like that before, it's just because I</p> <p>11 misunderstood your question. I'm really --</p> <p>12 like, there's, you know -- I'm certainly not</p> <p>13 doing homework when we're not talking, and that</p> <p>14 is knowledge that I have. I just didn't</p> <p>15 understand it as being relevant to the question</p> <p>16 you're asking. So I apologize. I'm sorry.</p> <p>17 Q. Don't apologize.</p> <p>18 So as part of the materials you</p> <p>19 reviewed, you also reviewed deposition testimony</p> <p>20 from Frederick Koberna, right?</p> <p>21 A. I did, yes.</p> <p>22 Q. I believe one of the counsel in</p> <p>23 that room was also at the Frederick Koberna</p> <p>24 deposition. But that's neither here nor there.</p> <p>25 Do you recall reading testimony in the</p>	<p style="text-align: right;">Page 109</p> <p>1 MS. PARFITT: July 8, I believe. Let</p> <p>2 me just double-check here. Yes, July 8. The</p> <p>3 second one was September 14.</p> <p>4 MR. EWALD: Yes.</p> <p>5 MS. PARFITT: Okay, very good. Thank</p> <p>6 you.</p> <p>7 MR. EWALD: Of course.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. And going to 173. Let me know</p> <p>10 when you're there.</p> <p>11 A. Okay. Yeah.</p> <p>12 Q. Okay. If you look at -- it's</p> <p>13 actually 172, I'm sorry, it starts on my 19</p> <p>14 question:</p> <p>15 "QUESTION: Okay. Did Johnson &</p> <p>16 Johnson ultimately warn against</p> <p>17 inhalation of Johnson's Baby Powder by</p> <p>18 babies?</p> <p>19 ANSWER: Yes, that's on our</p> <p>20 labeling."</p> <p>21 And if you go down a little bit</p> <p>22 further, it says -- going now on page 174, line</p> <p>23 6. And then it -- onto the bottle says:</p> <p>24 "...quote, 'Keep powder away from</p> <p>25 child's face to avoid inhalation,</p>

<p style="text-align: right;">Page 110</p> <p>1 which can cause breathing problems.'</p> <p>2 Close quotes. Do you see that?"</p> <p>3 ANSWER: Yes.</p> <p>4 QUESTION: So this is a warning</p> <p>5 that was added in response to the</p> <p>6 concerns about inhalation of Johnson's</p> <p>7 Baby Powder by infants, right?"</p> <p>8 There's an objection. And witness:</p> <p>9 "ANSWER: Yes, it was something</p> <p>10 that we would be responsive to</p> <p>11 doctors, and we would put that on</p> <p>12 there. Now, I'm not sure when it was</p> <p>13 added."</p> <p>14 Okay?</p> <p>15 A. Yep.</p> <p>16 Q. You see that?</p> <p>17 A. Yes.</p> <p>18 Q. Does that refresh your</p> <p>19 recollection that, in fact, there was a warning</p> <p>20 put on the bottle relating to inhalation in</p> <p>21 infants?</p> <p>22 A. Yes, yes.</p> <p>23 Q. So that is an instance in which a</p> <p>24 concern was raised relating to the safety of</p> <p>25 Johnson's Baby Powder, and Johnson & Johnson</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Do you have any opinions that</p> <p>2 Johnson & Johnson's response to the aspiration</p> <p>3 concern that was raised in the 1960s was</p> <p>4 inadequate?</p> <p>5 A. No, I don't.</p> <p>6 Q. So you don't think that Johnson &</p> <p>7 Johnson response misled and confused consumers?</p> <p>8 A. No. Mr. Ewald, are we all set</p> <p>9 with the Koberna deposition?</p> <p>10 Q. Oh, yeah.</p> <p>11 A. Okay.</p> <p>12 MS. PARFITT: I'm going to take it</p> <p>13 away. Thank you.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Now, you also, on page 15,</p> <p>16 paragraph 57, talk about the Daniel Cramer</p> <p>17 study, 1982, correct?</p> <p>18 A. Correct, yes.</p> <p>19 Q. And you note that the study is</p> <p>20 significant, paragraph 57, because it raised the</p> <p>21 possibility that the link between talc and</p> <p>22 cancer could be caused by a), fibers and talc</p> <p>23 itself, and b), those fibers could implant in</p> <p>24 the body via process of translocation, moving</p> <p>25 from the perineal area to the ovaries, right?</p>
<p style="text-align: right;">Page 111</p> <p>1 acted in response to that concern, correct?</p> <p>2 A. Yes. Although I would argue that</p> <p>3 it's a false equivalence to -- to -- the</p> <p>4 inhalation warning to pulling a product and</p> <p>5 replacing it with a cornstarch product. Those</p> <p>6 aren't the same. You know, when there are</p> <p>7 internal conversations talking about how talc</p> <p>8 itself is central to the business, is the golden</p> <p>9 egg, is the cornerstone of our franchise, we</p> <p>10 have an investment in a talc mine. That's</p> <p>11 not -- and so we should put a warning on it, is</p> <p>12 that we're going to pull the product and replace</p> <p>13 it with cornstarch.</p> <p>14 And so, you know, that they were</p> <p>15 responsive about this does not, in my mind,</p> <p>16 imply that they are responsive in all health</p> <p>17 issues or something like that.</p> <p>18 Q. Well, this is their response in</p> <p>19 the document that we were just talking about</p> <p>20 from 1966, where you noted that they have an</p> <p>21 investment in a talc mine and that it's a</p> <p>22 cornerstone of our franchise, right?</p> <p>23 A. Yeah. If we're talking about,</p> <p>24 just in reference to that 1966 document we were</p> <p>25 talking about before, sure, yeah.</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Correct, yes.</p> <p>2 Q. And do you feel like you have the</p> <p>3 expertise to offer an opinion as to whether a</p> <p>4 particular epidemiological study is significant?</p> <p>5 A. No, I --</p> <p>6 MS. PARFITT: Object to form.</p> <p>7 THE WITNESS: No, I do not. I do not.</p> <p>8 And that's not why I'm citing it here.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. Okay. Well, you said those</p> <p>11 very -- those are your words, correct? The</p> <p>12 Cramer study is significant because it raised</p> <p>13 the possibility about the link?</p> <p>14 A. Yes. It's significant because it</p> <p>15 raised -- publicly, it raised a link between</p> <p>16 talc and cancer use. And my understanding is</p> <p>17 that it is one of the first mentions in the</p> <p>18 peer-reviewed literature that prior to then,</p> <p>19 that the concern about talc had been asbestos,</p> <p>20 but asbestos as it related to lung cancer. And</p> <p>21 then after the Cramer study, it wasn't lung</p> <p>22 cancer, it was potentially ovarian cancer.</p> <p>23 And you see documents, internal</p> <p>24 documents from J&J which reflect that kind of</p> <p>25 shift about, Well, what's the relevant health</p>

<p style="text-align: right;">Page 114</p> <p>1 concern? So significant for that reason in 2 trying to understand this timeline of events. 3 Q. And it's your opinion that J&J 4 misled, deceived consumers by not letting them 5 know that the Cramer study had been published in 6 1982 and raised the possibility of a link 7 between talc and ovarian cancer? 8 A. No. I think what is -- talking 9 about this very specific time period, let's say 10 1982 to 1987, is now there are conversations 11 about asbestos and ovarian cancer in the 12 discussions about cornstarch. And so, okay, 13 we've got this cornstarch replacement and it's 14 going to address these health concerns about 15 talc and ovarian cancer. And so we're going to 16 replace the products. Let's do all this market 17 research to replace the products. And then that 18 never happens. 19 And so that, in my mind, is the 20 misleading or deceptive part is that the company 21 has very deliberately taken a strategy to 22 address the health concerns through product 23 replacement, and then that replacement never 24 happens and the reason for it isn't communicated 25 to consumers.</p>	<p style="text-align: right;">Page 116</p> <p>1 Canadian resident, I take things that Health 2 Canada says seriously, yeah. 3 Q. Fair enough. But you don't, I 4 don't believe, cite in your report other 5 regulatory bodies, for example, what the various 6 FDA -- various us federal regulatory bodies have 7 said about the potential link between talc and 8 ovarian cancer, do you? 9 MS. PARFITT: Objection. 10 THE WITNESS: Again, but I would come 11 back to, but what are they telling consumers? 12 And they're not communicating to consumers in, 13 look, there's conflicted evidence. They're 14 telling consumers, absolutely not. Don't worry 15 about it. Trust us. You can trust us in the 16 same way that you've trusted us for 100 years. 17 And just, there's a mounting pile of information 18 that's out there that at least is raising 19 questions about that. Internally, they're 20 having discussions about those questions, but 21 then the communication to consumers is very, 22 very different. 23 BY MR. EWALD: 24 Q. Okay. So there's a scientific 25 question raised about the safety of the product</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. But you also don't know the 2 reason for it, do you? 3 MS. PARFITT: Objection, form. 4 THE WITNESS: Again, I mean, we can -- 5 no, I don't -- no, I don't. Just to be fair, I 6 don't know. Yeah. 7 BY MR. EWALD: 8 Q. And do you know, in assessing 9 whether a particular epidemiological study is 10 significant, do you think that the FDA is better 11 situated than you in making that assessment? 12 MS. PARFITT: Objection, form. 13 THE WITNESS: Yeah. You know, it's 14 just an area that I'm not well -- I know what I 15 don't know. And so that's outside my expertise. 16 So I wouldn't be able to comment on which 17 regulatory body is better than which, or what 18 kind of standard or anything like that, yeah. 19 BY MR. EWALD: 20 Q. Well, you say which regulatory 21 body is better than which, but you cite a lot in 22 your document to Health Canada, correct? 23 A. Because you do have a national 24 health service that is saying we have a concern 25 about this product. I mean, as a current</p>	<p style="text-align: right;">Page 117</p> <p>1 externally. There are discussions about that 2 question that's been raised. There are 3 discussions within Johnson & Johnson about the 4 question that's been raised externally. And 5 it's your opinion then that if such discussions 6 take place that should be communicated to 7 consumers, correct? 8 A. It's my opinion that if there 9 are -- there are credible risks, and I'm coming 10 back to, you know, we talked a lot about 11 cornstarch, and I think cornstarch and the 12 history of cornstarch is exemplary because it -- 13 it shows that the company was taking those risks 14 seriously, that they spent over a decade trying 15 to develop a replacement product. So it's not 16 just at the level of, do you have to communicate 17 everything you discuss internally to the public? 18 That's not what I'm saying. 19 But if you take actions over a decade 20 because you think there's a health risk, then 21 there is some responsibility to communicate some 22 portion of that to consumers and not just say, 23 absolutely, without a question, without a doubt, 24 it's safe. 25 Q. What expertise/training do you</p>

<p style="text-align: right;">Page 118</p> <p>1 have just to make the opinion that you just did?</p> <p>2 A. I mean, my years of training as</p> <p>3 an expert in consumer behavior and consumer</p> <p>4 psychology, that when you speak to consumers in</p> <p>5 absolutes, that it's very different than talking</p> <p>6 about even a glimmer of a possibility otherwise.</p> <p>7 And I'll just give an example. So</p> <p>8 this is one of the papers I published. If you</p> <p>9 talk about pure natural spring water versus</p> <p>10 spring water with 0.001 percent additive or</p> <p>11 impurity, you get an enormous drop off in</p> <p>12 people's willingness to buy the product, that</p> <p>13 it's not linear, that any shred of a doubt or a</p> <p>14 possibility of impurity or something not being</p> <p>15 quite right with the product is enough to</p> <p>16 dramatically change consumers' perceptions.</p> <p>17 And so I think in this case, by not at</p> <p>18 least acknowledging the possibility and that</p> <p>19 there was evidence and evidence that they were</p> <p>20 taking seriously, seriously enough to take</p> <p>21 actions to develop a replacement product, to me,</p> <p>22 is misleading.</p> <p>23 Q. Well, what -- can you identify</p> <p>24 any peer-reviewed published paper that states</p> <p>25 that there's a glimmer of possibility of a</p>	<p style="text-align: right;">Page 120</p> <p>1 answer.</p> <p>2 You can try again, Doctor.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. Well, I heard -- no, I mean, what</p> <p>5 I heard, that's fair. I heard what you tell</p> <p>6 your intro class, what else?</p> <p>7 A. And again, coming back to the</p> <p>8 example of spring water, that there is a</p> <p>9 qualitative difference between saying this is</p> <p>10 pure natural spring water and spring water with</p> <p>11 0.01 percent additive, and that's not a linear</p> <p>12 change. And so just the same way that saying,</p> <p>13 Well, there is the potential for a health risk,</p> <p>14 and you know, we're kind of talking about the</p> <p>15 study that I conducted on my own earlier, right?</p> <p>16 Just even disambiguating things and</p> <p>17 acknowledging that there is evidence which finds</p> <p>18 a link changes how much people trust the</p> <p>19 company. And yes, absolutely, I think that is</p> <p>20 misleading or potentially confusing. Mr. Ewald,</p> <p>21 you froze.</p> <p>22 Q. Dr. Newman, you froze after</p> <p>23 saying "acknowledging." I'm sorry, I didn't</p> <p>24 hear anything after that. That was the first</p> <p>25 hiccup.</p>
<p style="text-align: right;">Page 119</p> <p>1 health risk associated with a product, the</p> <p>2 company should communicate that to consumer.</p> <p>3 A. If there's -- I don't know</p> <p>4 what -- I mean, we would talk about best</p> <p>5 practices, you know, if I'm teaching intro to</p> <p>6 marketing, intro to consumer behavior, we would</p> <p>7 talk about best practices. And certainly up</p> <p>8 there with best practices are, you know, you</p> <p>9 can't engage in false advertising, you can't</p> <p>10 mislead, you can't misstate product benefits,</p> <p>11 those kinds of things. So, I mean, those --</p> <p>12 these -- if you were to enter business school,</p> <p>13 this is kind of foundational to the training</p> <p>14 about what are, you know, acceptable principles</p> <p>15 or guiding principles or best practices.</p> <p>16 Q. Well, are you -- is it your</p> <p>17 opinion that it is misleading to customers and</p> <p>18 deceptive to customers not to provide them</p> <p>19 information about the glimmer of a possibility</p> <p>20 that a product could cause harm?</p> <p>21 A. It is, yes. Yes, that is my</p> <p>22 testimony, yes.</p> <p>23 Q. And then what do you rely on that</p> <p>24 form?</p> <p>25 MS. PARFITT: Objection. Asked an</p>	<p style="text-align: right;">Page 121</p> <p>1 A. It was probably very smart.</p> <p>2 Q. I'm sure it was. The court</p> <p>3 reporter, if she got it, can read it back. It</p> <p>4 was literally after the word "acknowledging."</p> <p>5 A. I'll just restate it just to make</p> <p>6 it easier on everybody. But just what we're</p> <p>7 talking about with the spring water example,</p> <p>8 there's a difference between communicating in</p> <p>9 absolutes and presenting a fuller picture of the</p> <p>10 information. And that it's misleading to not</p> <p>11 acknowledge these risks that the company was</p> <p>12 taking seriously, as evidenced by all of the</p> <p>13 work that they're doing on replacement products,</p> <p>14 et cetera.</p> <p>15 Q. Okay. I saw in your reliance</p> <p>16 list or reference list a couple of documents</p> <p>17 related to FDA citizen petition in 2008, 2000,</p> <p>18 1994 and the response in 2014. I didn't see</p> <p>19 reference to FDA's 1986 response to a citizen</p> <p>20 petition related to talc. Is that something</p> <p>21 that you've seen before?</p> <p>22 THE REPORTER: I'm sorry. I'm not</p> <p>23 catching what he's saying.</p> <p>24 MS. PARFITT: John, unfortunately, the</p> <p>25 reporter was unable to catch your question. If</p>

<p style="text-align: right;">Page 122</p> <p>1 you wouldn't mind repeating that.</p> <p>2 MR. EWALD: No worries.</p> <p>3 MS. PARFITT: Thank you.</p> <p>4 BY MR. EWALD:</p> <p>5 Q. So I'll break this down. You</p> <p>6 recall, Dr. Newman, that in your reference list,</p> <p>7 you include, some documents relating to FDA</p> <p>8 citizen petitions and responses in the 2000s?</p> <p>9 A. Yes, correct. Yeah.</p> <p>10 Q. And are you familiar with an FDA</p> <p>11 response in 1986 to a talc related citizen</p> <p>12 petition?</p> <p>13 A. I believe I am familiar with that</p> <p>14 document, yes.</p> <p>15 Q. Well, I'm going to pull it up</p> <p>16 now. I'll mark it an exhibit. And, Michelle, I</p> <p>17 don't know if it's something you guys set up, or</p> <p>18 there's only a couple parts in the show, but</p> <p>19 what do you need me to do?</p> <p>20 MS. PARFITT: John, I'm not -- it is</p> <p>21 not in our notebook.</p> <p>22 MR. EWALD: All right, so let me first</p> <p>23 put it in the chat.</p> <p>24 MS. PARFITT: John, I'm just going to</p> <p>25 swing around so I can see it as well. Okay.</p>	<p style="text-align: right;">Page 124</p> <p>1 name, Douillet, with a date of July 11, 1986.</p> <p>2 Let me look at it a little bit bigger.</p> <p>3 A. Yep.</p> <p>4 Q. And it says:</p> <p>5 "This responds to your November</p> <p>6 8, 1983 petition requesting that</p> <p>7 cosmetic talc be labeled with an</p> <p>8 asbestos warning statement,</p> <p>9 information on asbestos particle size</p> <p>10 and the proportion of talc impurities</p> <p>11 in the product."</p> <p>12 Is this ringing any bell? Is this</p> <p>13 something that you've seen, Dr. Newman?</p> <p>14 A. I don't believe I have ever seen</p> <p>15 this document.</p> <p>16 Q. Okay. Goes on to state:</p> <p>17 "You assert that, because the</p> <p>18 mine of talc almost invariably</p> <p>19 includes the mining of asbestos as</p> <p>20 well, cosmetic talc may contain</p> <p>21 significant amounts of asbestos</p> <p>22 particles that present inhalation</p> <p>23 hazard to humans. Also, you cite</p> <p>24 references to substantiate that</p> <p>25 significant amounts of asbestos have</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. EWALD: Sure. Okay, let me know</p> <p>2 when it's uploaded. It's looks like it's got</p> <p>3 across the wire. Should have a fancy red ribbon</p> <p>4 on the front.</p> <p>5 MS. PARFITT: There you go.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. EWALD:</p> <p>8 Q. All right. And any point in time</p> <p>9 if you need to review part of it, let me know.</p> <p>10 I'm just going to talk about a couple of pages</p> <p>11 to get started, we'll mark this.</p> <p>12 MS. PARFITT: Yeah, if I could just</p> <p>13 ask. Can just run down to the Bates number on</p> <p>14 that. That may be why I wasn't able to find the</p> <p>15 document.</p> <p>16 MR. EWALD: Yeah, no worries. This</p> <p>17 one actually just a "D." It's an internal</p> <p>18 document. It's D-7214, Exhibit number.</p> <p>19 MS. PARFITT: D 7214.</p> <p>20 MR. EWALD: Yes.</p> <p>21 MS. PARFITT: Thank you.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. Yes, and what we see here on page</p> <p>24 3 of the PDF, it is a letter from the FDA to</p> <p>25 Mr. Phillippe. I don't know how to say his</p>	<p style="text-align: right;">Page 125</p> <p>1 been found in commercial talc samples,</p> <p>2 that asbestos inhalation is hazardous</p> <p>3 to humans, and that asbestos</p> <p>4 contaminants in talc will produce</p> <p>5 toxicological responses when inhaled."</p> <p>6 Goes on to say that:</p> <p>7 "However, your petition has not</p> <p>8 persuaded us that cosmetic talc that</p> <p>9 is presently being produced contains</p> <p>10 significant amounts of asbestiform</p> <p>11 minerals."</p> <p>12 Then it talks about:</p> <p>13 "During the early 1970s, FDA</p> <p>14 became concerned about the possibility</p> <p>15 that cosmetic talc did contain</p> <p>16 significant amounts of this material.</p> <p>17 The agency received several reports</p> <p>18 about such contamination. However, at</p> <p>19 that time, the analytical procedures</p> <p>20 for determining asbestos in talc were</p> <p>21 not fully developed and most of the</p> <p>22 analytical work was conducted without</p> <p>23 scientific agreement as to which</p> <p>24 methods were well-suited for the</p> <p>25 identification of asbestiform minerals</p>

<p style="text-align: right;">Page 126</p> <p>1 in talc." 2 Let me stop there for a moment. Did I 3 read that correctly? 4 A. Yeah. Yeah. 5 MS. PARFITT: And, John, may I ask a 6 favor, if you will? The Doctor has indicated 7 he's never seen this document before. I don't 8 have it in his exhibit list, as well. So if he 9 could have an opportunity, and you can either 10 come back to it, or he can read it now, to read 11 the entire doc -- he's never seen this document 12 and I know we're reading parts for it and you're 13 being very fair about that, but he's never seen 14 the document before and I can't tell from what's 15 on the screen what's before and what's after. 16 MR. EWALD: Fair. And maybe one way 17 to do it, the letters, I see two pages, I also 18 want to show him something else about it, but 19 there's also a lot of analytical data in the 20 back part. 21 MS. PARFITT: Yes. 22 MR. EWALD: So if you want, one idea 23 was considering if you want to look at it over 24 the lunch break. 25 MS. PARFITT: Yes.</p>	<p style="text-align: right;">Page 128</p> <p>1 happy to break now for lunch or continue on, 2 whatever you guys prefer, and whatever the court 3 reporter prefers. 4 MS. PARFITT: Do you want to take a 5 quick break now or can you go a little longer? 6 THE WITNESS: I can go -- yeah. You 7 know, I'm a late lunch eater. So I can go a 8 little bit longer and then maybe 30 minutes or 9 something like that. 10 MS. PARFITT: Yeah, John. If we can 11 do this: Give us three minutes. We're going to 12 see if we can get something ordered here so we 13 can keep moving here, just give us three 14 minutes. 15 -- LUNCH TAKEN AT 12:42 P.M. 16 -- RESUME AT 1:43 P.M. 17 BY MR. EWALD: 18 Q. All right. Dr. Newman, did you 19 have a chance to take a look at the 1986 FDA 20 response to citizens petition? 21 A. I read the first two pages and 22 then there was a bunch of material at the end 23 that I wasn't able to review. 24 Q. Well, we will get to that in a 25 moment, but set it aside, but not too far from</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. EWALD: I'd be happy to go back to 2 it. 3 MS. PARFITT: Yeah. If we can move on 4 from this, John, 'til we get a copy of it, he 5 can take a look at it and then we can come back 6 to it. 7 MR. EWALD: Sure. 8 MS. PARFITT: Because it's got a lot 9 of information at the very end. 10 MR. EWALD: Yeah. No, no, I agree. 11 Before I forget, Leila, it's Exhibit 7, right? 12 THE REPORTER: Yes, it is, counsel. 13 EXHIBIT NO. 7: Food and Drug 14 Administration Certificate - D-7214 15 (1986 FDA). 16 MS. PARFITT: All right. Thank you. 17 MR. EWALD: Sure. And let me know if 18 you have any problems accessing it from the 19 chat. 20 MS. PARFITT: Very good. 21 MR. EWALD: I'm going to make a 22 Post-It note, because if I don't, I'm not going 23 to go back to it. Hold on. We will get back to 24 that one. Although, let me pause. It is 12:41 25 where I am. We've gone another hour. I am</p>	<p style="text-align: right;">Page 129</p> <p>1 where you are. 2 A. Okay. 3 Q. And if you look at your report. 4 A. Yeah. 5 Q. On paragraph 52, which is on page 6 13. 7 A. Okay, I'm there. Yep. 8 Q. And you see that says: 9 "In 1974 it was noted by 10 executives at Johnson & Johnson that 11 'During the past couple of years, our 12 need for a non-talc dusting powder has 13 increased as a direct result of the 14 talc/asbestos controversy.'" 15 That's what it says, right? 16 A. Yes, that's what it says. 17 Q. What, based on your review of 18 documents in this case, what is your 19 understanding of the talc/asbestos controversy 20 that's referred to happening in the early 1970s? 21 A. Based on my understanding, the 22 talc/asbestos controversy was regarding the 23 presence of asbestos in talc. 24 Q. Okay. And do you have an 25 understanding as to any details relating to that</p>

<p style="text-align: right;">Page 130</p> <p>1 controversy?</p> <p>2 A. Yeah, so there are -- I mean,</p> <p>3 again, this wasn't the, you know, the focus of</p> <p>4 my review. But I did encounter documents, you</p> <p>5 know, which talked about there being J&J,</p> <p>6 internal documents about the detection of</p> <p>7 asbestos. I believe there's a document from</p> <p>8 right around the same time, I think, 1975 or</p> <p>9 something, which talks about the potential for,</p> <p>10 you know, asbestiform fibers to be detected.</p> <p>11 And so, yeah those kinds of documents. That's</p> <p>12 about it.</p> <p>13 Q. Is the document that you're</p> <p>14 referring to, asbestiform fibers, is that the</p> <p>15 one you're quoting, a couple paragraphs up in</p> <p>16 50?</p> <p>17 A. No. This is -- yeah, okay. I</p> <p>18 mean, yeah, that's definitely one of them. I</p> <p>19 think there was another one that I have -- I</p> <p>20 made note of that the last five -- you have to</p> <p>21 forgive me, I'm new to the Bates numbering</p> <p>22 system. But the last five are 26989, I believe</p> <p>23 that's a review of present status of talc</p> <p>24 safety.</p> <p>25 Q. Yep. Okay, so on that one, we're</p>	<p style="text-align: right;">Page 132</p> <p>1 including that.</p> <p>2 A. Yeah.</p> <p>3 Q. Just starting on page one. And</p> <p>4 for the record, we are marking - I don't think I</p> <p>5 said this - as Exhibit 8 a Johnson & Johnson</p> <p>6 internal memo dated April 26, 1973, with subject</p> <p>7 line "Windsor minerals and talc."</p> <p>8 EXHIBIT NO. 8: Johnson & Johnson</p> <p>9 internal memo, "Windsor minerals and</p> <p>10 talc." April 26, 1973.</p> <p>11 BY MR. EWALD:</p> <p>12 Q. And paragraph 1 states that:</p> <p>13 "It is our joint conclusion that</p> <p>14 we should not rely on the 'Clean Mine'</p> <p>15 approach as a protective device for</p> <p>16 Baby Powder in the current Asbestos or</p> <p>17 Asbestos-Form controversy. We believe</p> <p>18 this mine to be very clean; however,</p> <p>19 we are also confident that fiber</p> <p>20 forming or fiber type materials could</p> <p>21 be found. The usefulness of the</p> <p>22 'clean mine' approach for asbestos</p> <p>23 only is over."</p> <p>24 Did I read that correctly?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 131</p> <p>1 actually going to talk about that one next.</p> <p>2 Let's first, though, let's talk about the</p> <p>3 document you're referring to in paragraph 50.</p> <p>4 It is J&J 0025188. I will mark it as an</p> <p>5 exhibit. If it helps at all, that was also in</p> <p>6 your materials. It was -- starts with the</p> <p>7 number 0242, if that means anything to you.</p> <p>8 MS. PARFITT: Yeah, just give me a</p> <p>9 moment here, John, and we'll try and pull it up</p> <p>10 for him.</p> <p>11 MR. EWALD: Sure.</p> <p>12 MS. PARFITT: And I'm sorry, John,</p> <p>13 again, you said 25188?</p> <p>14 MR. EWALD: Yep.</p> <p>15 MS. PARFITT: Just give me one minute</p> <p>16 here. Yeah. 242. Ready?</p> <p>17 THE WITNESS: Yes.</p> <p>18 MS. PARFITT: 242.</p> <p>19 THE WITNESS: Mr. Ewald, I'm going to</p> <p>20 go ahead and pull that full document because I</p> <p>21 know that there's some text at the end, too,</p> <p>22 that that is important to my opinion.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. And, yeah, I'm going to talk</p> <p>25 about a couple different parts of the document,</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. How do you interpret that</p> <p>2 paragraph?</p> <p>3 A. We're going to detect some stuff</p> <p>4 that looks like asbestos.</p> <p>5 Q. And when they say "The usefulness</p> <p>6 of the 'clean mine' for asbestos only is over,"</p> <p>7 what do they mean in your view?</p> <p>8 A. I interpret that as -- as</p> <p>9 referring to some kind of claim that you're not</p> <p>10 going to find anything here that looks like</p> <p>11 asbestos; we shouldn't take this strategy in</p> <p>12 talking about our mine this way, and instead we</p> <p>13 should acknowledge that you might find some</p> <p>14 stuff that looks like asbestos.</p> <p>15 Q. When you say "stuff that looks</p> <p>16 like asbestos," you're talking about the shape?</p> <p>17 A. I was just responding to how --</p> <p>18 you're asking me, kind of, how I interpret</p> <p>19 paragraph 1 --</p> <p>20 Q. Yeah.</p> <p>21 A. -- and I was paraphrasing it,</p> <p>22 that we're going to find, you know, we're going</p> <p>23 to find some fibers that look like asbestos.</p> <p>24 Q. Right? And I'm not -- you cited</p> <p>25 this document in your report and you quote from</p>

<p style="text-align: right;">Page 134</p> <p>1 it, right?</p> <p>2 A. That's correct, yes.</p> <p>3 Q. Right. So I am only asking</p> <p>4 what -- how you interpreted it when you reviewed</p> <p>5 it --</p> <p>6 A. Sure.</p> <p>7 Q. -- you included it in your</p> <p>8 report. And so when you're saying looks like</p> <p>9 asbestos, are you saying that it has the</p> <p>10 morphology of asbestos? Is that what you're</p> <p>11 saying?</p> <p>12 MS. PARFITT: Objection, form.</p> <p>13 THE WITNESS: Yeah, I'm not -- I'm not</p> <p>14 able -- you know, I am not well-versed enough in</p> <p>15 this issue to know, you know, when whether --</p> <p>16 you know, kind of different types of morphology</p> <p>17 and categorization. All I could say is that I</p> <p>18 interpret that in plain language to say, you</p> <p>19 know, the chances that we detect something that</p> <p>20 registers as asbestos is high enough that we</p> <p>21 shouldn't claim that our minds never have</p> <p>22 anything that looks like asbestos in them.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. Right. So if you go to the next</p> <p>25 page 2, and it's paragraph b., do you see that,</p>	<p style="text-align: right;">Page 136</p> <p>1 tremolite or fibrous talc. Our Baby</p> <p>2 Powder contains talc fragments</p> <p>3 classifiable as fiber. Occasionally</p> <p>4 sub-trace quantities of tremolite or</p> <p>5 actinolite are identifiable (optical</p> <p>6 Microscope) and these might be</p> <p>7 classified as asbestos fiber."</p> <p>8 How do you interpret that? What's</p> <p>9 being said in that paragraph?</p> <p>10 A. Well, there's a few different</p> <p>11 ideas. But the first part of that paragraph, I</p> <p>12 interpret it as the testing guidelines at the</p> <p>13 FDA are changing and we shouldn't rely on what</p> <p>14 has escaped detection before to continue to</p> <p>15 escape detection. And so that as the standard</p> <p>16 shifts, there is likely to be detection of</p> <p>17 tremolite and actinolite, you know, if they use</p> <p>18 a standard or a procedure of using an optical</p> <p>19 microscope.</p> <p>20 Q. Well, and then does it also talk</p> <p>21 about there in the middle that if talc, in the</p> <p>22 form of fiber, is identified, it could be</p> <p>23 included within the cosmetic division in the FDA</p> <p>24 food division ban? That's what they're saying</p> <p>25 there. Do you agree?</p>
<p style="text-align: right;">Page 135</p> <p>1 as in "boy"?</p> <p>2 A. Yeah. This is like 4 b?</p> <p>3 Q. Yes, sir.</p> <p>4 A. Yeah. Okay.</p> <p>5 Q. And so it says:</p> <p>6 "As for Baby Powder, the entire</p> <p>7 thrust of our communications with the</p> <p>8 FDA is concentrated on asbestos as</p> <p>9 harmful fiber-like material.</p> <p>10 Sophisticated techniques have been</p> <p>11 proposed to make sure that fiber</p> <p>12 formed materials present in samples</p> <p>13 were identified as being asbestos.</p> <p>14 The implications that all other fiber</p> <p>15 forms, if present, were talc or other</p> <p>16 minerals and these were safe. This</p> <p>17 posture will no longer be satisfactory</p> <p>18 if the FDA...Division, which is moving</p> <p>19 more rapidly than Cosmetic Division,</p> <p>20 publishes a standard, it will probably</p> <p>21 be to ban asbestos-form or fibrous</p> <p>22 material in talc. That could</p> <p>23 eliminate the current uses of talc in</p> <p>24 packaging materials. These talcs</p> <p>25 contain widely varying amounts of</p>	<p style="text-align: right;">Page 137</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: I would -- again, I</p> <p>3 would interpret that, yeah, as that the FDA</p> <p>4 could categorize it that way using essentially a</p> <p>5 different method or standard.</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Right. When we say categorize it</p> <p>8 a different way, they could categorize talc in</p> <p>9 the shape of a fiber as something that would be</p> <p>10 banned, right?</p> <p>11 MS. PARFITT: Objection, form. And</p> <p>12 again, John, I think he's indicated that this is</p> <p>13 not the different fiber types, it's not</p> <p>14 something that is his expertise.</p> <p>15 BY MR. EWALD:</p> <p>16 Q. I understand. But he does cite</p> <p>17 to it, and I have some questions on how it</p> <p>18 impacts his opinion. So I want to get</p> <p>19 appreciation of how he understands it.</p> <p>20 A. Sure. I would say that my</p> <p>21 interpretation of how this is worded is, again,</p> <p>22 solely around, kind of, outward appearances,</p> <p>23 right? I mean, kind of going back to this idea</p> <p>24 that health and safety are our number one</p> <p>25 concerns, right? There's like nothing about</p>

<p style="text-align: right;">Page 138</p> <p>1 that here. It's just like, well, how's it going 2 to look if now suddenly there's detection of 3 asbestos in our product? And so there's a 4 subtext here to this document that I think is 5 important to my opinion. 6 Q. Okay, well, they say if the FDA 7 food division standard is adopted, that could 8 eliminate the current uses of talc and packaging 9 materials, right? 10 A. Yes. 11 Q. And so if a business is trying to 12 be proactive and is identifying that a current 13 product that's currently constituted may be 14 banned by a changing regulation, it makes sense 15 to explore opportunities, other opportunities, 16 right? 17 MS. PARFITT: Objection, form. 18 THE REPORTER: Sorry. Could you just 19 repeat the last part, counsel? I didn't quite 20 catch you. 21 BY MR. EWALD: 22 Q. Sure. If a company -- isn't 23 it -- withdrawn. 24 Wouldn't a prudent company who 25 identifies the possibility that a standard</p>	<p style="text-align: right;">Page 140</p> <p>1 They also talk about the detection of talc in 2 their talc product, right? 3 A. Yes, correct. Yes. 4 Q. And so if there's going to be a 5 standard that is potentially promulgated that 6 would ban the current product as manufactured, 7 it makes sense to identify potential 8 alternatives to the currently constituted 9 product, correct? 10 MS. PARFITT: Objection, form. 11 THE WITNESS: Yeah, I mean, again, 12 maybe I'm getting a little bit confused by the 13 question. So I just interpret b. as saying, 14 4 b. as the standards are shifting and there may 15 be detection of things, there may be detection 16 of asbestos in our product. And then it goes on 17 to 5 to say, Well, what are we going to do about 18 it? And part of what they're considering is 5 19 c., Well, an obvious answer would be cornstarch. 20 BY MR. EWALD: 21 Q. Okay. You talked about, again, 22 your understanding. You didn't include the part 23 where they say that there's a definition that 24 could be promulgated, that would include banning 25 products that have talc in the shape of fibers,</p>
<p style="text-align: right;">Page 139</p> <p>1 change may result in a product that's currently 2 constituted being banned look at alternative 3 options if that ban came to fruition? 4 MS. PARFITT: Objection, form. 5 THE WITNESS: I'm having a little bit 6 of trouble parsing it, but the way that I'm 7 interpreting that question is like in what I 8 mention in my report is I go to five sub point 9 C, which is, Okay, well, let's use cornstarch. 10 It doesn't have any of these health risks. It's 11 not going to have any fibers that could be 12 potentially harmful and it's assimilated into 13 the body. So that could be a good option for 14 us. 15 BY MR. EWALD: 16 Q. Well, where does it say in 4 b. 17 that the company, i.e. Johnson & Johnson, is 18 worried about the safety of its talc products? 19 A. I don't think it says that 20 they're worried about the safety of their 21 product. They're worried about -- I interpret 22 4 b. as they're worried about detection. 23 They're worried about the detection of asbestos 24 in their product. 25 Q. Well, they talk about asbestos.</p>	<p style="text-align: right;">Page 141</p> <p>1 right? 2 MS. PARFITT: Objection, form. 3 THE WITNESS: I mean, I think this 4 might be drifting into a degree of expertise 5 that I'm really not qualified to speak on in 6 things that, for instance, may look like 7 asbestos but aren't really asbestos. And I'm 8 not able to make those kinds of distinctions or 9 ferret that out here. 10 And I just -- in as plain of English 11 as I can interpret that -- that paragraph, it's, 12 you know, there's going to be detection and 13 just, I mean, to kind of go back to the 14 beginning of the document, it seems to be framed 15 right around what we're telling people. You 16 know, are we -- are we using this kind of "clean 17 mine" approach? Should we be telling people 18 there's no asbestos in our product? And then I 19 interpret 4 b. as, Well, one thing that could 20 change is that with these new standards, there's 21 going to be detection of asbestos in our 22 product. And I would say, that's really the 23 limit of my understanding of that document. 24 BY MR. EWALD: 25 Q. Well, I understand that the</p>

<p style="text-align: right;">Page 142</p> <p>1 limitations that you're talking about, and what 2 I'm trying to figure out is what you understand 3 about the controversy in the early 1970s, 4 because what you've stated many times, I 5 believe, just tell me I'm right, and my 6 understanding that J&J's response to what is 7 referred to as sometimes as talc/asbestos 8 controversy in the early 1970s is proof that the 9 risk presented was credible, right? 10 A. I would say that their actions 11 over -- beginning in the 1970s through the 12 1980s, in my mind, lend credence to the idea 13 that they believe that the risks were credible. 14 Yeah. 15 Q. Okay. And so in trying to 16 understand what that talc/asbestos controversy 17 is, we're talking about a document that you cite 18 and quote from in your report. And if we go 19 back to paragraph 1, it talks about clean mine 20 approach. It says: 21 "We believe this mine to be very 22 clean; however, we are also confident 23 that fiber forming or fiber type 24 minerals could be found." 25 In that phrase, starting with,</p>	<p style="text-align: right;">Page 144</p> <p>1 possible regulation that's out there that could 2 be promulgated from FDA food division that 3 include not only asbestos, but also talc in a 4 fibrous form, correct? 5 MS. PARFITT: And you're asking him, 6 is that what it says? Is that the question, 7 John? Is that what that says? 8 BY MR. EWALD: 9 Q. Yeah, is that how he understands 10 it? 11 MS. PARFITT: Well, that's a 12 different -- 13 THE WITNESS: Yeah. That's not -- 14 MS. PARFITT: -- question. 15 THE WITNESS: That's now exactly how I 16 understand that sentence. I mean -- or sorry, 17 that paragraph that I interpreted that paragraph 18 as, We might detect stuff that registers as 19 asbestos; this new method might detect stuff 20 which could -- again, we're getting outside my 21 expertise. But as you could consider me a 22 layperson on this issue, and as a layperson, I 23 interpret that as saying, Maybe it actually is 24 asbestos, you know, or it's something that 25 registers asbestos, but we're going to get a</p>
<p style="text-align: right;">Page 143</p> <p>1 "however," do you see asbestos anywhere in that 2 phrase? 3 MS. PARFITT: Objection, form. 4 THE WITNESS: I do recognize the word 5 "however," yes. 6 BY MR. EWALD: 7 Q. Do you see that phrase: 8 "however, we are also confident 9 that fiber forming or fiber type 10 minerals could be found." 11 Do you see the word "asbestos" appear 12 anywhere? 13 A. No. Not in that part of the 14 sentence, no. 15 Q. Right. And the next sentence 16 says: 17 "The usefulness of the 'Clean 18 Mine' approach for asbestos only is 19 over." 20 That's what it says, right? 21 A. Right, correct. Yes. 22 Q. "Asbestos only," right? 23 A. Correct, yes. 24 Q. And then when we scroll back to 25 4 b., and it talks about the fact that there's a</p>	<p style="text-align: right;">Page 145</p> <p>1 positive hit with this new method. 2 BY MR. EWALD: 3 Q. I want to talk about the other 4 document that you mentioned -- 5 A. Sure. 6 Q. -- a moment ago. And that one is 7 the January 1975 one. If it helps you, I 8 believe the doc number that you guys put, 9 probably by tab or index, is 128. 10 MS. PARFITT: One, two, eight, okay. 11 One, two, eight. Just give us one moment, John. 12 We'll grab it. 13 MR. EWALD: Sure. 14 MS. PARFITT: And, John, again, it's 15 review of the present status of talc, January 16 1975. 17 MR. EWALD: Yes. 18 MS. PARFITT: Okay, very good. Thank 19 you. 20 BY MR. EWALD: 21 Q. Okay, for the record, we're 22 marking as Exhibit 9 a January 1975 document 23 titled "Review On The Present Status Of Talc 24 Safety Substantiation Activities And Update Of 25 Contingency Plans," Bates Number of</p>

<p style="text-align: right;">Page 146</p> <p>1 J&J000026987.</p> <p>2 EXHIBIT NO. 9: "Review On The Present</p> <p>3 Status Of Talc Safety Substantiation</p> <p>4 Activities And Update Of Contingency</p> <p>5 Plans," January 1975, Bates Number of</p> <p>6 J&J000026987.</p> <p>7 BY MR. EWALD:</p> <p>8 Q. And, Doctor, this is a document</p> <p>9 that you reviewed and cite and quote in your</p> <p>10 report, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And if we turn to page 2, you'll</p> <p>13 see there is a historical review on page 7. I'd</p> <p>14 like to turn there. Let me know when you're</p> <p>15 there.</p> <p>16 A. Let me see. It's page 7 in the</p> <p>17 document. Yeah. Okay.</p> <p>18 Q. So this 1975 document starts with</p> <p>19 on the "Historical Review" bullet point that:</p> <p>20 "Researchers and consumerists</p> <p>21 first raised questions on talc several</p> <p>22 years ago. The most vocal of these</p> <p>23 was the Tenovus Group in England and</p> <p>24 the Mount Sinai Hospital Group in New</p> <p>25 York City."</p>	<p style="text-align: right;">Page 148</p> <p>1 and the identification of the issues in this</p> <p>2 paragraph. Assuming that's correct, is that</p> <p>3 something that Johnson & Johnson should have</p> <p>4 reported to consumers, otherwise, it would be</p> <p>5 misleading and deceptive?</p> <p>6 MS. PARFITT: Objection. Misstate the</p> <p>7 evidence.</p> <p>8 THE WITNESS: You know, it's hard for</p> <p>9 me to comment on a specific event, especially</p> <p>10 because I'm just not familiar with this report</p> <p>11 from Mount Sinai, and then the inspection of the</p> <p>12 individuals, and it's mentioned here, Medical</p> <p>13 Research Council in England. So it would be</p> <p>14 hard for me to form an opinion of that specific</p> <p>15 event. But just to situate this historically,</p> <p>16 then you have a whole lot of actions post-1975</p> <p>17 that seem to be taking the health concerns</p> <p>18 pretty darn seriously, as evidenced by all the</p> <p>19 cornstarch discussion that we were having</p> <p>20 earlier.</p> <p>21 So those are all documents and market</p> <p>22 research testing that's coming way after 1975.</p> <p>23 And I just -- if this is an open and shut, kind</p> <p>24 of, issue in 1975, then why are they spending so</p> <p>25 much time and money thinking about a replacement</p>
<p style="text-align: right;">Page 147</p> <p>1 It goes on to say:</p> <p>2 "One of their first publications</p> <p>3 asserted that they found talc and</p> <p>4 ovarian cancer tissue. Subsequent to</p> <p>5 this publication their laboratory was</p> <p>6 examined by Dr. Pooley, consultant of</p> <p>7 Johnson & Johnson, and Dr. Geoffrey</p> <p>8 Lord. Through the Medical Research</p> <p>9 Council in England they were</p> <p>10 criticized for their techniques. That</p> <p>11 is, the individuals who examined their</p> <p>12 laboratory found very high backgrounds</p> <p>13 of talc in the processing solutions</p> <p>14 and paraffin baths which made the</p> <p>15 occurrence of any talc on histological</p> <p>16 slides highly suspect."</p> <p>17 Are you familiar at all with the</p> <p>18 Tenovus Group findings that are referred to</p> <p>19 here?</p> <p>20 A. Not really, no.</p> <p>21 Q. Right. If, indeed -- well, let</p> <p>22 me put it this way. I want you to assume that</p> <p>23 Johnson & Johnson scientific assessment of</p> <p>24 Tenovus Group's first publication is correct,</p> <p>25 that they were criticized for their techniques</p>	<p style="text-align: right;">Page 149</p> <p>1 product afterwards?</p> <p>2 BY MR. EWALD:</p> <p>3 Q. Do you know who Dr. Selikoff is?</p> <p>4 A. No, I don't.</p> <p>5 Q. By the way, did you read this</p> <p>6 part of the document that you cited and quoted</p> <p>7 in your report?</p> <p>8 A. I did, yes, I believe so, yeah.</p> <p>9 Q. All right. So this goes on in</p> <p>10 the second bullet on page 7, carrying over to</p> <p>11 page 8:</p> <p>12 "Dr. Selikoff, Director of</p> <p>13 Environmental Sciences Laboratory,</p> <p>14 Mount Sinai School of Medicine has</p> <p>15 been a vocal leader in environmental</p> <p>16 pollution and is presently stationed</p> <p>17 at Mount Sinai Hospital in New York</p> <p>18 City. He has with him Dr. Langer, who</p> <p>19 is a mineralogist. They concentrated</p> <p>20 on the asbestos issue and contend that</p> <p>21 the presence, even a single fiber</p> <p>22 could cause cancer. In the press they</p> <p>23 have established considerable</p> <p>24 confusion by linking talc with</p> <p>25 asbestos using terminology stemming</p>

<p style="text-align: right;">Page 150</p> <p>1 from geological origin. They have 2 been responsible for erroneous 3 statements to the New York Times 4 regarding the content of asbestos in 5 talcum powders. These statements were 6 later retracted in subsequent New York 7 Times publications." 8 Did I read that correctly? 9 A. You did read it correctly, yes. 10 Q. So here we have an internal 11 document, Johnson & Johnson, 1975. It's Johnson 12 & Johnson saying that in the press, it is people 13 like New York Times and Dr. Langer who are 14 establishing considerable confusion by linking 15 talc with asbestos, correct? 16 MS. PARFITT: Objection, form. 17 THE WITNESS: That's what it appears 18 to say, yes. 19 BY MR. EWALD: 20 Q. And you don't have the expertise, 21 one way or another, to know whether Johnson & 22 Johnson is right in that the conclusions of 23 Dr. Langer and Dr. Selikoff are erroneous nor 24 retracted, right? 25 A. No.</p>	<p style="text-align: right;">Page 152</p> <p>1 they talk about some of the potential problems 2 which we talked about in other documents seem to 3 be economic problems. Here, they're mentioning 4 some other potential medical problems. Those 5 didn't bear out -- I don't see those in any 6 other documents post that point. 7 But even in the context of all of 8 these health issues, they're talking about, 9 okay, well, cornstarch seems to be a really good 10 alternative solution. We think it's the number 11 one answer. And I think that's very important 12 to understanding at least the marketing strategy 13 and what -- what I'm speaking to. 14 Q. And I appreciate your point on 15 that. Do you think that it is appropriate, 16 scientifically, to take a look at the talc 17 strategy conclusion on page 18 to 19 without 18 understanding or having the ability to 19 understand the historical context that is 20 communicated in the preceding 18 pages. 21 MS. PARFITT: Objection, form. 22 THE WITNESS: Are you saying, is it -- 23 is it -- I don't -- is the question about 24 whether it's scientifically valid for J&J or... 25 BY MR. EWALD:</p>
<p style="text-align: right;">Page 151</p> <p>1 MS. PARFITT: Objection, form. 2 THE WITNESS: I'm not able to evaluate 3 that. 4 BY MR. EWALD: 5 Q. It goes on to say on page 9: 6 "Johnson & Johnson has always 7 taken a position of cooperation." 8 And the top question, Food and Drug 9 Administration notes. You know anything about 10 Dr. Lewin's testing, know anything about that? 11 A. I know the name. But no, not 12 really it. Mr. Ewald, I just -- I do want to -- 13 because that's not the only aspect of the 14 document that I discussed. And I think there is 15 a really informative part of the document on the 16 last page, on page 18 where they talk about 17 strategy, which is most germane to what I 18 reviewed, certainly where I focused my efforts 19 and my reading of that last page is, Look, our 20 best bet is to go with cornstarch. The first 21 sentence is: 22 "Cornstarch appears to be the 23 number one answer to any alternates to 24 talcum powder. We presently have..." 25 Something that's ready to go. Then</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. For you. Reach conclusions that 2 you do about what this paragraph means about 3 cornstarch alternatives without understanding 4 the context in which it is written? 5 MS. PARFITT: Objection, misstates, 6 what is earlier testimony. 7 THE WITNESS: Again, just to clarify, 8 my position is, you know, if I were to, at a 9 high level, summarize how I interpret this 10 document is there are a lot of concerns about 11 the safety of talc. We have some studies that 12 are out -- currently underway. Some of those 13 seem to be sponsored by Johnson & Johnson. All 14 of these, as I interpret them, are, again, 15 concerns about asbestos and lung cancer. 16 And so when -- again, I'm not -- this 17 is outside my expertise, but when I look at 18 something like the Rubino studies that's talking 19 about lung cancer, not ovarian cancer or 20 anything like that, and then they're saying, 21 Okay, well, there are all of these problems and 22 one obvious solution here is to go with 23 cornstarch. And that began -- that's one 24 document in a long line of documents which 25 reinforces this idea that I think culminates in</p>

<p style="text-align: right;">Page 154</p> <p>1 some documents later on where they say things 2 like, it's an inevitability that corn, excuse 3 me, talc is going to be removed from the market. 4 How should we figure out how to replace it, et 5 cetera, et cetera. So -- yeah. 6 BY MR. EWALD: 7 Q. So you mean -- 8 MS. PARFITT: Please. Are you done? 9 Are you done? 10 THE WITNESS: I'm done, yeah. Yeah, 11 go ahead. 12 BY MR. EWALD: 13 Q. You made reference to some of the 14 studies being funded by J&J is -- are you 15 offering an opinion that it was bad corporate 16 practice to fund studies going to whether or not 17 the products that are being used are safe? 18 MS. PARFITT: Objection, misstates his 19 testimony. 20 THE WITNESS: My understanding, again, 21 this is outside my area of expertise. My 22 understanding is that that is a common practice 23 for companies to sponsor medical research. But 24 my problem with it is then what they tell the 25 public, because they don't communicate that to</p>	<p style="text-align: right;">Page 156</p> <p>1 THE WITNESS: You know, I would have 2 to -- I would have to look at it. But, I mean, 3 I guess if you want to talk about specifics -- 4 I'm not aware of that. Again, I can't comment 5 on that right now because you're just telling me 6 about it. But I haven't verified it in any way 7 for myself or looked into it. 8 BY MR. EWALD: 9 Q. I guess -- I understand that. 10 I'm asking whether, if what I'm saying is true, 11 does that matter to you? 12 MS. PARFITT: Object, does it matter 13 to him. 14 THE WITNESS: Again, I thought -- I'll 15 just kind of restate, hopefully, to clarify. 16 That funding for research comes from somewhere, 17 to me, isn't necessarily problematic when we're 18 talking about the consumer-related issues, is, 19 what do you then communicate to the public. In 20 this case, Johnson & Johnson, we could look at a 21 1985 press release document where they're 22 coaching -- what seems to be to coach PR people 23 within the organization about how to talk about 24 Johnson's Baby Powder. And they use words like 25 "independent scientists." So that part is</p>
<p style="text-align: right;">Page 155</p> <p>1 the public at all. They say, you know, 2 independent scientists have concluded that this 3 is safe. And, no, it's not true that these 4 scientists were working completely 5 independently. And I think yet another instance 6 in which they're misleading the public, 7 misleading consumers, and not allowing people to 8 really make up their own mind about the issue. 9 BY MR. EWALD: 10 Q. What about, you talked about 11 Health Canada. Do you know whether any of the 12 studies that were relied on by Health Canada 13 were funded by some of the plaintiff's law firms 14 that are on this very deposition. 15 MS. PARFITT: Object, form. 16 THE WITNESS: No, I don't know about 17 any of the specifics of those. 18 BY MR. EWALD: 19 Q. Does that matter to you? 20 A. I'm sorry? 21 Q. Does it matter to you whether or 22 not the -- some of the studies relied on by 23 Health Canada are funded by plaintiff law firms? 24 MS. PARFITT: Objection, misstates the 25 evidence.</p>	<p style="text-align: right;">Page 157</p> <p>1 misleading, and that's really what I'm talking 2 about. 3 BY MR. EWALD: 4 Q. So if a scientist completes a 5 study and that study is funded by a party 6 interested in the result, you wouldn't call that 7 person an independent scientist? 8 MS. PARFITT: Objection. 9 THE WITNESS: I wouldn't say that 10 those scientists have worked independently. 11 BY MR. EWALD: 12 Q. Okay. Let's look at another 13 document around the same time. This was one 14 that I don't think I saw in your report. I 15 could be wrong, but was in the additional 16 documents reviewed. It is 0419 in your indexing 17 system. Let me know when you've got it. 18 MS. PARFITT: John, again, if you give 19 us just a moment. 20 MR. EWALD: Sure. 21 MS. PARFITT: And John, again. 0419. 22 That's just four letters, right? 23 MR. EWALD: 0419 is the four numbers, 24 yeah. 25 MS. PARFITT: John, I'm looking at his</p>

<p style="text-align: right;">Page 158</p> <p>1 references and Dropbox, and I'm not seeing 0419, 2 so may can either come back -- 3 MR. EWALD: If it makes any difference 4 this was from the production you guys made a day 5 or two ago. 6 MS. PARFITT: The only addition we 7 made the other day were websites. 8 MR. EWALD: It's also in the 9 additional -- maybe it's in the additional 10 document review folder. I think that's where I 11 remember seeing it. 12 MS. PARFITT: So I may have to have 13 you put that in the chat because I don't see a 14 copy of that. Okay, I'm going in -- and I don't 15 have my computer to go into the Dropbox. 16 MR. EWALD: No worries. 17 MS. PARFITT: John, if you can give me 18 a date of the report, that may be helpful, too. 19 MR. EWALD: Yeah., It's just, if it 20 helps at all, I found it looking right now in 21 the folder that was request numbers, 5 to 19, 22 materials reviewed, additional materials 23 considered, 0419 pops up there, but the date is 24 March 3, 1975. 25 MS. PARFITT: Again, John, I hate to</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Yeah, yeah. Take your time. I 2 just want to make sure, on the same page. 3 A. Okay. I've completed the second 4 paragraph. Okay. I've completed that 5 paragraph. 6 Right. And I think this is at least, 7 maybe, one of the things in the previous 8 document where, you know, I was -- led me to 9 believe that some of the studies were paid for 10 by J&J. Okay, I finished reading it. Yeah. 11 Q. This wasn't the additional 12 documents considered folder, at least when I 13 looked at it. 14 And is it fair to say that the 15 document in that folder would not have been 16 included in your report? 17 A. I think that's fair to say. I 18 had assistance putting those folders together. 19 I didn't assemble those folders myself. But, 20 yeah, I think that's probably fair. 21 Q. By the way, on that front, 22 besides assistance -- all the assistance at 23 University of Toronto? 24 A. No, no. 25 Q. Assistance with the law firm?</p>
<p style="text-align: right;">Page 159</p> <p>1 make you do that, but I can't get into my 2 computer right now since you're using it, or I'd 3 go through the Dropbox. I may have to have you 4 put that in the chat. 5 MR. EWALD: That's fine. What I'm 6 doing right now, it's just a two pager. 7 MS. PARFITT: If you'd be kind enough, 8 when you put it in, unless he recognizes it 9 right away, give him a couple minutes to refresh 10 his memory on it, since I don't have anything to 11 put in front of him. 12 MR. EWALD: Sure. 13 MS. PARFITT: Thank you. 14 THE WITNESS: I think just to make 15 it -- I'll open it, but I'm just going to 16 minimize that so I can just look it, because I 17 think it's going to be too much to try to go 18 back and forth. So I'll just look off of the 19 screen and then I'll let you know if I've got a 20 break from that. 21 BY MR. EWALD: 22 Q. So, sorry. Are you reviewing it 23 now? 24 A. I'm sorry. Yeah, so I just 25 finished reading the first paragraph.</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Correct, yes. Yes. 2 Q. Do you know, or do you have 3 any -- let me say it this way. 4 How does this document, if at all, 5 inform your opinions in this case? 6 A. Again, I don't remember this 7 being a part of my opinions. In reading it, 8 now, to be quite candid, I do not interpret it 9 favorably to Johnson & Johnson. 10 Q. Do you think I'm only going to 11 put documents in front of you that are favorable 12 to Johnson & Johnson? 13 A. No, no. I mean, but you're 14 just -- well, I don't think that's an 15 unreasonable assumption, actually. But, you 16 know, my reading of this is, you know, what 17 we -- if you want to talk about specifics, I'm 18 happy to. But it is, you know, essentially the 19 first part is, you know, we've only responded 20 and looked for data when people have found 21 something bad about our product. And part of 22 the reason why we didn't do that is because we 23 might find something -- part of the reason why 24 we weren't more proactive is that we didn't -- 25 might find something bad ourselves. And, man,</p>

<p style="text-align: right;">Page 162</p> <p>1 that would be even more embarrassing than</p> <p>2 somebody else finding something bad.</p> <p>3 And then, there's some discussion</p> <p>4 about, Well, maybe we should take an alternative</p> <p>5 strategy, and if we're able to sponsor some</p> <p>6 research proactively that finds negative</p> <p>7 effects, that would be good, because now we're</p> <p>8 not just responding in kind. But to me, as a</p> <p>9 scientist and a researcher, this reads a little</p> <p>10 bit like, We've reached our conclusion, and how</p> <p>11 best to strategize on looking for evidence</p> <p>12 that's going to best support that conclusion</p> <p>13 with the general public, is how I interpret that</p> <p>14 document.</p> <p>15 Q. Okay. And do you know, for</p> <p>16 example, whether Johnson & Johnson funded the</p> <p>17 NIOSH study of talc mine workers, as referred to</p> <p>18 here and at the end?</p> <p>19 A. I don't know that. No, no.</p> <p>20 Q. Do you know whether or not the</p> <p>21 study, you see it's reference there, was</p> <p>22 ultimately published in the literature for</p> <p>23 anyone to review?</p> <p>24 A. Again, I don't know. That might</p> <p>25 have been one of the studies that I looked at,</p>	<p style="text-align: right;">Page 164</p> <p>1 reminder.</p> <p>2 MS. PARFITT: Oh, John. Oh, you have</p> <p>3 it up?</p> <p>4 THE WITNESS: Yeah.</p> <p>5 MS. PARFITT: Okay.</p> <p>6 THE WITNESS: I'm comfortable. Yeah,</p> <p>7 yeah, yeah. I'm comfortable.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. So when we were talking about</p> <p>10 this document, we were reading from its response</p> <p>11 to the citizen petition about talc and asbestos.</p> <p>12 And I believe we left off saying:</p> <p>13 "In addition...</p> <p>14 This is on page 2 of the letter, 4 the</p> <p>15 PDF:</p> <p>16 "...FDA surveillance activities</p> <p>17 that were conducted in the latter</p> <p>18 portion of the 1970s showed that the</p> <p>19 quality --</p> <p>20 Actually, I took a little bit --</p> <p>21 A. Mr. Ewald, just for context,</p> <p>22 because I'm looking at it for the first time.</p> <p>23 Can you just explain to me the origin of this</p> <p>24 document, who's producing it, and who's the</p> <p>25 intended audience?</p>
<p style="text-align: right;">Page 163</p> <p>1 in looking at many studies, but I don't recall.</p> <p>2 Q. Do you recall reviewing the final</p> <p>3 published study of Professor Rubino by the</p> <p>4 Italian talc millers and miners?</p> <p>5 A. Again, I -- not well, and</p> <p>6 certainly that I couldn't speak to its merits or</p> <p>7 dis-merits. But I do, I think, remember reading</p> <p>8 that study, yes.</p> <p>9 Q. All right. Let's go back to FDA</p> <p>10 1986. We marked it as Exhibit 7 before the</p> <p>11 lunch break.</p> <p>12 MS. PARFITT: If you can give me a</p> <p>13 minute. I put it in the exit screen and let me</p> <p>14 see if I can get it.</p> <p>15 THE REPORTER: Sorry, counsel, did you</p> <p>16 want to mark that previous document?</p> <p>17 MR. EWALD: I meant to say Exhibit 10.</p> <p>18 If I didn't, that document, March 3, 1975.</p> <p>19 EXHIBIT NO. 10: Johnson & Johnson</p> <p>20 document, Management Authorization for</p> <p>21 Additional Talc Safety Studies, March</p> <p>22 3, 1975.</p> <p>23 THE REPORTER: Okay, perfect. Thank</p> <p>24 you.</p> <p>25 MR. EWALD: Thank you for the</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Sure. Well, the first page is a</p> <p>2 certificate that has an official red ribbon from</p> <p>3 the Department of Health and Human Services.</p> <p>4 And this affidavit talking about that this is</p> <p>5 from the custody of official records of the US</p> <p>6 FDA.</p> <p>7 A. Yes.</p> <p>8 Q. Certified copy signed from</p> <p>9 December 2015. And this is a letter response</p> <p>10 July 1986 to the individual who submitted the</p> <p>11 November 8, 1983 petition requesting that</p> <p>12 cosmetic talc be labeled within asbestos warning</p> <p>13 statement. Do you see that?</p> <p>14 A. Correct, yes. Okay.</p> <p>15 Q. And, actually, I was on the wrong</p> <p>16 page when we left off. We were talking about</p> <p>17 this paragraph from the FDA about the early</p> <p>18 1970s, and the FDA stating that:</p> <p>19 "...the analytical procedures for</p> <p>20 determining asbestos in talc were not</p> <p>21 fully developed, and most of the</p> <p>22 analytical work was conducted without</p> <p>23 scientific agreement as to which</p> <p>24 methods were well-suited for the</p> <p>25 identification of asbestiform minerals</p>

<p style="text-align: right;">Page 166</p> <p>1 and talc. Consequently, FDA 2 considered all analytical results to 3 be a questionable reliability." 4 Did I read that correctly? 5 A. You did read it correctly. 6 Q. And do you have any basis to 7 disagree with the FDA statement on that. 8 MS. PARFITT: Objection, form. 9 THE WITNESS: I don't have any basis 10 to offer an opinion one way or the other. 11 BY MR. EWALD: 12 Q. And when you are -- sorry. When 13 you are reviewing documents from the early 1970s 14 that talk about testing results of asbestos, is 15 it important to you, as a scientist, to know 16 whether or not the test methods that are being 17 used are reliable? 18 A. I mean, if you're asking me, 19 generally, of course. If I'm evaluating 20 research in my own area where I have expertise, 21 you know, I serve as a reviewer almost weekly, 22 you know, at all of our top journals, some at 23 general science journals. Yeah, I mean, of 24 course, I'm attending very carefully to 25 methodology, but I also know what I don't know,</p>	<p style="text-align: right;">Page 168</p> <p>1 early 1970s did contain asbestos form mineral. 2 That's what it says, right? 3 A. Correct? Yes. 4 Q. Does it say cosmetic talc 5 produced by Johnson & Johnson? 6 A. No, it doesn't. 7 Q. And if I'm remembering correctly, 8 you stated earlier that you're not offering an 9 opinion whether or not Johnson & Johnson talc 10 products have ever had asbestos, correct? 11 A. Correct, correct. Yes. And 12 again, I'm not citing this document. This isn't 13 a document that I relied on, and so I'm not 14 making broad conclusions. But if we're pointing 15 to what's inside the scope of my expertise 16 versus not, that statement is much more in the 17 scope of my expertise in evaluating the 18 marketing materials than would be 19 classifications of different kinds of fibers. 20 Q. It goes on in the second page of 21 the letter to state: 22 "Consequently... 23 The FDA says: 24 "...we find that there is no 25 basis at this time for the agency to</p>
<p style="text-align: right;">Page 167</p> <p>1 and I'm not able to evaluate methodology in this 2 case. 3 If you wouldn't mind, I don't want to 4 take us off course. But for my purposes, when I 5 look at a document like this and I read a 6 sentence that's in the previous paragraph that 7 says: 8 "The agency is also aware that 9 some cosmetic talc produced in the 10 1960s and early 1970s did contain 11 asbestiform minerals." 12 And then I read Johnson & Johnson 13 marketing materials that say no asbestos ever, 14 right? That's the kind of incongruency that is 15 really setting off alarm bells for me. So I'm 16 not able to evaluate the science of detection, 17 but I can say, well, look, the FDA is saying it 18 used to contain asbestos, at least. And 19 Johnson, and Johnson is telling consumers: 20 Never contained asbestos. And that is the kind 21 of disconnect that I'm really concerned with. 22 Q. Well, so now we're -- it doesn't 23 say -- well, specifically what it says on page 1 24 of the letter is the agency is also aware that 25 some cosmetic talc produced in the 1960s and</p>	<p style="text-align: right;">Page 169</p> <p>1 conclude that there is a health hazard 2 attributable to asbestos in cosmetic 3 talc. Without evidence of such 4 hazard, the agency concludes that 5 there is no need to require a warning 6 label on cosmetic talc." 7 Did I read that correctly? 8 A. Yes, you did read it correctly. 9 Q. I know you didn't see this before 10 issuing your report, but does that conclusion by 11 the FDA have any impact on your opinions? 12 A. No. But also, doesn't the same 13 logic apply as -- so we just said before, it 14 doesn't say Johnson & Johnson. It also doesn't 15 say Johnson & Johnson here, right? So in saying 16 that there used to be talc in it -- or used to 17 be asbestos in it, and it's not singling out 18 Johnson & Johnson. It's also, in this sentence, 19 not saying, you know, Johnson & Johnson in 20 particular is free from this. 21 Q. But do you understand that this 22 was a request for the FDA to change -- to 23 require certain hazardous label warning, and 24 that they are rejecting that for all cosmetic 25 talc?</p>

<p style="text-align: right;">Page 170</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: Again, I mean, I can</p> <p>3 start to form an impression of this document</p> <p>4 based on reading it. It's harder for me to put</p> <p>5 it into a larger context. But --</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Now, another part of the</p> <p>8 document, if we go a little bit further, this is</p> <p>9 a June 6, 1985 memorandum, Department of Health</p> <p>10 and Human Services. "Asbestos in Talc" from</p> <p>11 Quantitative Risk Assessment Committee, Gary</p> <p>12 Flamm, Office of Toxicological Sciences. And</p> <p>13 there's some discussion of asbestos and lung</p> <p>14 cancer.</p> <p>15 I want to ask you about ovarian talc</p> <p>16 study:</p> <p>17 "For completeness, a discussion</p> <p>18 is presented on a human</p> <p>19 epidemiological study purporting to</p> <p>20 show an association between talc use,</p> <p>21 (talcum powder used for genital</p> <p>22 dusting on the perineum or on sanitary</p> <p>23 napkins) and ovarian cancer.</p> <p>24 The Cramer et al. study [2],</p> <p>25 which purported to show a</p>	<p style="text-align: right;">Page 172</p> <p>1 one moment in time. I would put this document</p> <p>2 in context with my reading right, that was like</p> <p>3 1986. But then you also have 1986 documents</p> <p>4 that are right around the same time which are</p> <p>5 advocating for the replacement of talc powder</p> <p>6 with cornstarch when they're doing market</p> <p>7 analyses, when they're evaluating safety</p> <p>8 hazards, et cetera. And so, I mean, my take</p> <p>9 would be, if it's such a non-issue, why are they</p> <p>10 continuing to speculate on it and consider</p> <p>11 alternatives?</p> <p>12 BY MR. EWALD:</p> <p>13 Q. You cite in your report, the</p> <p>14 FDA -- let's go there. Hold on. So, in page</p> <p>15 19, including paragraph 75, you reference a</p> <p>16 citizens petitions to the FDA from 1994. And</p> <p>17 then on page 21, starting on paragraph 82, you</p> <p>18 also mention a second citizens petition,</p> <p>19 relating to talc 2008, right?</p> <p>20 A. Correct, yes.</p> <p>21 Q. And I saw on your reference list</p> <p>22 that you're aware of the 2014 decision denying</p> <p>23 the citizen petition request, correct?</p> <p>24 A. I am aware of that, yes.</p> <p>25 Q. Is there any reason why you</p>
<p style="text-align: right;">Page 171</p> <p>1 significantly increased relative risk</p> <p>2 for ovarian cancer associated with</p> <p>3 talc use, 1) appears to have been</p> <p>4 misinterpreted statistically, 2) was</p> <p>5 uncorrected for several likely biasing</p> <p>6 factors and 3) appears to have been</p> <p>7 strongly contradicted by another study</p> <p>8 showing a reduced relative risk as</p> <p>9 significant in the negative direction</p> <p>10 as the Cramer study was in the</p> <p>11 positive direction."</p> <p>12 Did I read that correctly?</p> <p>13 A. You did read it correctly, yes.</p> <p>14 Q. You've seen this before?</p> <p>15 A. No, I've never seen this.</p> <p>16 Q. Is it -- if the FDA is correct,</p> <p>17 that the Cramer 1982 study has the three</p> <p>18 deficiencies that I just identified, is it still</p> <p>19 your position that when Johnson & Johnson</p> <p>20 becomes aware of a publicly available Cramer</p> <p>21 study in 1982, it should have communicated that</p> <p>22 to consumers?</p> <p>23 MS. PARFITT: Objection to form.</p> <p>24 THE WITNESS: I mean, again, the basis</p> <p>25 of my opinion isn't around one single study or</p>	<p style="text-align: right;">Page 173</p> <p>1 didn't include that in your report?</p> <p>2 A. No. I mean, it wasn't -- you</p> <p>3 know, I'm not -- my report isn't about the FDA.</p> <p>4 My report is about Johnson & Johnson and how</p> <p>5 they talk to consumers.</p> <p>6 Q. Okay. Well, a citizen submits --</p> <p>7 well, actually, it says, this is a cancer</p> <p>8 prevention coalition submits a petition to the</p> <p>9 FDA saying, requiring a warning label relating</p> <p>10 to talc, ovarian cancer, and that is rejected by</p> <p>11 the FDA. And you're saying that that has no</p> <p>12 relevance to your opinions?</p> <p>13 MS. PARFITT: Objection, misstates</p> <p>14 stasis testimony.</p> <p>15 THE WITNESS: Well, I mean, again, my</p> <p>16 understanding of the timeline here is that</p> <p>17 there's first a petition in 1994 and then -- and</p> <p>18 then another petition in 2008. And so there's</p> <p>19 no response to the '94 or 2008 until 2014. And</p> <p>20 so, you know, that's 14 years, you know, by my</p> <p>21 count, where there's no response at all, right,</p> <p>22 from the FDA.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. Understood. But does it have no</p> <p>25 relevance to you -- does it not have any impact</p>

<p style="text-align: right;">Page 174</p> <p>1 on your opinion that the citizens petitions that 2 you cite and quote from in your report were 3 ultimately denied by the FDA? 4 MS. PARFITT: Objection, form. 5 THE WITNESS: You know, again, I'm 6 mostly interested in what Johnson & Johnson is 7 telling their consumers. And so there's a 8 period of time, like everything before 2014, 9 there's a lot of marketing actions that are 10 happening. And so if you want to say, okay, 11 well, that was an important period in which the 12 FDA has a decision about it, there's still this 13 huge stretch of time where there's citizen 14 positions [sic], there's more and more studies 15 that are coming out that are finding an 16 association. 17 There are these internal discussions 18 about translocation and ovarian cancer. There 19 are these emails that are exchanged between 20 people at Johnson & Johnson saying, I don't feel 21 comfortable selling this or having it in the 22 baby aisle, or, we never told women to put it on 23 their perineal area. And so all of that is 24 happening prior to 2014. So in terms of, is 25 there evidence that J&J didn't get consumers a</p>	<p style="text-align: right;">Page 176</p> <p>1 paragraphs, on page 22, is that right? 2 A. Yes, that's correct. Yeah. 3 Q. Okay. And so how do you 4 interpret what Mr. True is saying in those two 5 emails that you quote at length in your report? 6 A. Well, I think there's a few 7 things that are going on here that are really 8 important. One, you know, you have somebody 9 within the company that seems to be taking these 10 health concerns very seriously. You know: 11 "The reality that talc is unsafe 12 for use on or around babies is 13 disturbing. You know: 14 "I don't think we can...keep it 15 in the baby aisle." 16 And so there's raising those concerns 17 internally, which is not inconsistent with other 18 periods of time. But then there's, there's also 19 some kind of severe institutional amnesia in the 20 responses, right, about, for instance, why 21 cornstarch was developed. 22 And like in Fred Koberna's reply on 23 April 18th, okay, well, the reason why we 24 launched cornstarch is because women prefer the 25 feel of it. Well, that's not true at all,</p>
<p style="text-align: right;">Page 175</p> <p>1 fair shake? I think there's lots of evidence of 2 that. 3 BY MR. EWALD: 4 Q. Well, so are you suggesting that 5 if the science -- if the science -- that's 6 wrong. 7 Are you suggesting that if the side of 8 the science that Johnson & Johnson has 9 steadfastly stated it believes is accurate, that 10 its talc does not cause cancer, if that science 11 is ultimately proven correct, your opinion is 12 still, they've engaged in misleading and 13 deceptive conduct because they didn't express 14 the alternative viewpoint in previous years? 15 MS. PARFITT: Objection, form. 16 THE WITNESS: Yes. Yeah, yeah, yeah. 17 Short answer, yes. 18 BY MR. EWALD: 19 Q. Right. Now, you mentioned the 20 baby aisle thing. 21 And specifically, are you talking 22 about the Todd True emails? 23 A. Yeah. 24 Q. Okay. And so we're all on the 25 same page. It's referred to 84 through 86</p>	<p style="text-align: right;">Page 177</p> <p>1 because we can look back to all of the documents 2 that we were talking about in the early eighties 3 where it was about addressing these health 4 concerns. There was nothing about women might 5 like the feel better. That's not in any of the 6 testing. 7 And so not only are there concerns 8 about the product, but then there's kind of this 9 institutional amnesia about why alternatives 10 were developed, what potential health risks 11 might be. Yeah, I'll stop there. 12 Q. Okay. And so when you say about 13 Todd True -- first of all, Todd True, you have 14 it there in parentheses is the global creative 15 director at J&J? 16 A. That's my understanding, yes. 17 Q. Fair to say that at least you 18 wouldn't expect the global creative director to 19 have any scientific medical background, correct? 20 MS. PARFITT: Objection, form. 21 THE WITNESS: I would expect that 22 person to have a high touch with consumers. 23 BY MR. EWALD: 24 Q. Okay. And when you talked about 25 these health concerns that are raised by</p>

<p style="text-align: right;">Page 178</p> <p>1 Mr. True, what health concerns is he referring</p> <p>2 to?</p> <p>3 A. I can only assume that it is the</p> <p>4 same health concerns that we've been talking</p> <p>5 about.</p> <p>6 Q. Having what?</p> <p>7 A. I guess, relating to ovarian</p> <p>8 cancer or cancer.</p> <p>9 Q. Right. And in fact, in your --</p> <p>10 we'll mark it as Exhibit 11, your three page</p> <p>11 intro -- three page set of notes that</p> <p>12 Ms. Parfitt helpfully sent over, you have</p> <p>13 different sections, you have inhalation, you</p> <p>14 have inhalation and cancer, asbestos. And you</p> <p>15 have a section where you have some excerpts</p> <p>16 under ovarian cancer, correct?</p> <p>17 EXHIBIT NO. 11: Dr. Newman's notes.</p> <p>18 THE WITNESS: Correct, yes.</p> <p>19 BY MR. EWALD:</p> <p>20 Q. And you include the Todd True</p> <p>21 excerpts under the ovarian cancer section,</p> <p>22 right?</p> <p>23 A. Yeah. And to be clear, this is</p> <p>24 just my categorization.</p> <p>25 Q. Right. And you said you're</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. This maybe be referring to a risk</p> <p>2 of aspiration with babies that's warned on the</p> <p>3 label?</p> <p>4 MS. PARFITT: Objection, misstates the</p> <p>5 evidence.</p> <p>6 THE WITNESS: Yeah, I don't -- you</p> <p>7 know, I don't see evidence of that. I mean,</p> <p>8 also the last sentence is, given the number of</p> <p>9 other ingredient issues we were facing, just</p> <p>10 seems like an easy fix and win. So this isn't</p> <p>11 talking about inhalation risk, this is talking</p> <p>12 about what's in the product, what's in the</p> <p>13 ingredients, right?</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Well, you tell me.</p> <p>16 A. So the next -- okay:</p> <p>17 "I don't mind selling talc, I</p> <p>18 just don't think we can continue to</p> <p>19 call it Baby Powder and keep it in the</p> <p>20 baby aisle. Have we done any research</p> <p>21 to determine the potential negative</p> <p>22 impact to our brand or best for baby</p> <p>23 strategy by maintaining this</p> <p>24 ingredient?"</p> <p>25 So it isn't by this aeration method or</p>
<p style="text-align: right;">Page 179</p> <p>1 making an assumption that he's referring to</p> <p>2 ovarian cancer, right?</p> <p>3 A. Correct. My understanding from</p> <p>4 all of the materials that I reviewed is that at</p> <p>5 that point in time, in the early 2000s, the main</p> <p>6 health risk that we're talking about with talcum</p> <p>7 powder is associated with cancer, ovarian</p> <p>8 cancer.</p> <p>9 Q. So if that's the case, and you</p> <p>10 said that you expect Mr. True to have a high</p> <p>11 touch with customers, why would he be saying we</p> <p>12 should move this cancer causing powder from the</p> <p>13 baby aisle to the adult aisle?</p> <p>14 A. I find that very -- I mean, I</p> <p>15 find it very disturbing.</p> <p>16 Q. So now you're disturbed by</p> <p>17 Mr. True's email that you're saying that he is</p> <p>18 suggesting that we need to be -- make sure we're</p> <p>19 killing adults and not babies?</p> <p>20 A. I don't know how else to</p> <p>21 interpret that sentence.</p> <p>22 Q. Well, remember that when we</p> <p>23 talked about aspiration and that risk to infants</p> <p>24 earlier?</p> <p>25 A. Sure, yeah.</p>	<p style="text-align: right;">Page 181</p> <p>1 type of cap or -- they're talking about an</p> <p>2 ingredient that's in there. So I would assume</p> <p>3 that to be talc or talc that contains asbestos.</p> <p>4 Q. Doctor, can you state to a</p> <p>5 reasonable degree, degree of professional</p> <p>6 certainty that the health risk that Todd True is</p> <p>7 talking about in his emails that you referred to</p> <p>8 and quote, in paragraphs 84 and 85, is ovarian</p> <p>9 cancer?</p> <p>10 A. No. I mean, I can't -- very,</p> <p>11 very little you could say for certain. I think</p> <p>12 it is more probable than not, in my reading,</p> <p>13 that he is talking about an ingredient issue</p> <p>14 with the product since he uses the word</p> <p>15 ingredient a number of times and not some other</p> <p>16 health risk. In Koberna's reply, he</p> <p>17 spontaneously -- they're both talking about</p> <p>18 cornstarch, right? I mean, again, I don't know</p> <p>19 how this -- it's difficult for me to substitute</p> <p>20 a theory in which they're talking about</p> <p>21 inhalation because it just doesn't fit the</p> <p>22 language that's used there.</p> <p>23 Q. Well, in paragraph 86,</p> <p>24 Mr. Koberna is talking about how:</p> <p>25 "...we introduced the cornstarch</p>

<p style="text-align: right;">Page 182</p> <p>1 variant as an alternative to talc for 2 use on babies. Due to the talc issue 3 and some doctors recommending for moms 4 not to use powder on their babies, we 5 don't promote powder to moms." 6 You're telling me that you can't 7 reasonably read that couple of sentences to mean 8 that the recommendation by doctors that you 9 referenced, all the way back in 1966, not to use 10 baby powder on infants because of the risk of 11 aspiration? 12 MS. PARFITT: Objection. 13 BY MR. EWALD: 14 Q. Is that not what they're 15 referring to there? 16 MS. PARFITT: Sorry, John. Objection, 17 form, misstates the evidence. 18 THE WITNESS: No, I don't read it that 19 way at all because there's nothing that I 20 encountered in any of the evidence that I 21 reviewed which suggested that one of the 22 benefits of the cornstarch variant had to do 23 with inhalation. And so I don't know why he 24 would mention a cornstarch variant in reference 25 to inhalation. There are other aspects of</p>	<p style="text-align: right;">Page 184</p> <p>1 testimony. 85 reads: 2 "Basically, I'm thinking it would 3 be in the brand's...interest to 4 develop a strategy to move out of the 5 baby aisle for our talc product and 6 either create a direct Adult 7 proposition or simply replace the talc 8 ingredient with cornstarch." 9 So that, to me, says he's talking 10 about an ingredient issue. The ingredient he's 11 worried about is talc. And should we replace it 12 with cornstarch? And so I -- and don't know -- 13 I can't guess at what exactly is in Todd True's 14 head and if he wants to give cancer to adults or 15 something like that. I don't know at all. But 16 you know, yeah. 17 Q. All right. We talked about a 18 little bit earlier on paragraph 75. 19 A. Yeah. 20 Q. One second. I'll get back to 21 that one. Let's talk about -- oh, we've going 22 about hour, twelve minutes. I'm happy to keep 23 on going, but if people want to take a break, 24 I'm happy to take a break. 25 A. Yeah, take a break. I could use</p>
<p style="text-align: right;">Page 183</p> <p>1 Koberna's reply that are concerning, right, 2 because he says, if I'm not wrong, he's the 3 director of, basically, marketing public 4 insights, strategic insights, right? He says, 5 we don't promote powders to moms. That's not 6 true at all. They advertise powders to moms. 7 There's a long history of them advertising to 8 adult women. And they created special lines 9 around that. 10 So I think there's a lot that, in his 11 reply, that's just factually not correct. And 12 the only way I can make sense of it is that he's 13 talking about talc as an ingredient and 14 cornstarch as an alternative ingredient. 15 BY MR. EWALD: 16 Q. Right. And so you're -- and 17 again you're reading of 84 and 85, paragraphs, 18 and 86, I guess, too. 19 A. Yeah. 20 Q. The Todd True emails is that Todd 21 True is saying we can't have products that can 22 cause ovarian cancer used on babies. We need to 23 move that cancer causing product to the adult 24 aisle. That's your testimony? 25 A. Just to quote -- yeah, that is my</p>	<p style="text-align: right;">Page 185</p> <p>1 the restroom. 2 -- RECESS TAKEN AT 2:56 P.M. 3 -- RESUME AT 3:07 P.M. 4 BY MR. EWALD: 5 Q. Dr. Newman, if you can turn 6 please to page 19 of your report, paragraph 75. 7 A. Yes. 8 Q. And you talk here about certain 9 statements from Dr. Alfred Wehner. And can you 10 explain to me why you included these two 11 paragraphs in your report? 12 A. Because -- so my understanding is 13 Alfred Wehner is a consultant of Johnson & 14 Johnson. And then he is raising issues, two 15 people at Johnson & Johnson, to say that, you 16 know, I mean, I could just quote it directly, 17 but that, you know, to say that: 18 "industrial exposure to talc, 19 both by skin contact and 20 inhalation...presents no 21 significant risk' is 'outright 22 false." 23 And so it's certainly relevant to, you 24 know, what -- what does Johnson & Johnson know 25 or internally, what are some of the discussions</p>

<p style="text-align: right;">Page 186</p> <p>1 versus what are they telling people since this</p> <p>2 mentions directly kind of what's communicated</p> <p>3 publicly.</p> <p>4 Q. Okay. And so is it your</p> <p>5 interpretation of that document that Dr. Wehner</p> <p>6 is somebody who believes there is a link between</p> <p>7 talc and ovarian cancer?</p> <p>8 A. Yes, that's how I interpret it.</p> <p>9 Q. Let's look at the document itself</p> <p>10 that you're citing to. It is -- you cite to the</p> <p>11 one Bates base number of J&J000040596, dated</p> <p>12 9/17/97. And, Michelle, I'll give you a chance</p> <p>13 to find that.</p> <p>14 MS. PARFITT: Thank you. I appreciate</p> <p>15 that. John, for some reason, it is not coming</p> <p>16 up, and I can't search, again, on my computer.</p> <p>17 MR. EWALD: For whatever reason, it</p> <p>18 might have been just me, I couldn't find it in</p> <p>19 the...</p> <p>20 MS. PARFITT: In the Dropbox.</p> <p>21 MR. EWALD: In the Dropbox. I'll put</p> <p>22 it in the chat.</p> <p>23 MS. PARFITT: I'm still looking to see</p> <p>24 whether or not we got a bad number on it.</p> <p>25 MR. EWALD: I'll put it in the chat.</p>	<p style="text-align: right;">Page 188</p> <p>1 witness a moment to read. And please let me</p> <p>2 know, Doctor, when you want me to scroll down.</p> <p>3 A. Okay. Sorry. That was the first</p> <p>4 paragraph. This one's a little dense. Yeah.</p> <p>5 Okay. I finished that first page.</p> <p>6 MS. PARFITT: You might want to read</p> <p>7 the whole thing.</p> <p>8 THE WITNESS: Yep. Okay. And I'm</p> <p>9 just now at the paragraph that begins, "Mike."</p> <p>10 Okay, all set.</p> <p>11 BY MR. EWALD:</p> <p>12 Q. So after reviewing this two page</p> <p>13 document again, is it still your opinion that</p> <p>14 Dr. Wehner has concluded that cosmetic talc does</p> <p>15 not cause ovarian cancer? Causes ovarian</p> <p>16 cancer?</p> <p>17 A. That's not --</p> <p>18 MS. PARFITT: Objection to form.</p> <p>19 Please.</p> <p>20 THE WITNESS: Sorry. That's how I'm</p> <p>21 interpreting what he's saying.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. How are you interpreting it?</p> <p>24 A. Sure. The way that I interpret</p> <p>25 it is he's critiquing the messaging, which is</p>
<p style="text-align: right;">Page 187</p> <p>1 MS. PARFITT: I appreciate that.</p> <p>2 THE WITNESS: I'm just gonna do the</p> <p>3 same thing as before. I'll open it here, but</p> <p>4 I'll just read off of yours. I think it should</p> <p>5 be fine.</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Yes. It's a two page document,</p> <p>8 so hopefully it works, okay. And so I don't</p> <p>9 forget, we are marking this as Exhibit 12.</p> <p>10 EXHIBIT NO. 12: Letter from Alfred</p> <p>11 Wehner to Michael Chudkowski at J&J</p> <p>12 Consumer Products. J&J Bates Number</p> <p>13 000040596, September 17, 1997.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. And this is not me being the</p> <p>16 grammar or typo of police. But just so you</p> <p>17 know, you have Alfred Werner and it's Wehner.</p> <p>18 W-E-H. It's kind of hard to read a little bit.</p> <p>19 Just trying to help you out.</p> <p>20 A. Thank you. I just completely --</p> <p>21 I read that as an "R." My apologies.</p> <p>22 Q. No, doesn't matter to me. And</p> <p>23 September 17, 1997, J&J Bates Number 000040596,</p> <p>24 and it's directed to Michael Chudkowski at J&J</p> <p>25 Consumer Products. And I will now give the</p>	<p style="text-align: right;">Page 189</p> <p>1 in -- at multiple points, he's saying that you</p> <p>2 have either denied associations or have said</p> <p>3 that there is no evidence whatsoever and that's</p> <p>4 simply false. Or you said that translocation is</p> <p>5 possible. That is false. To me, I interpret</p> <p>6 that not as a statement about causality, but</p> <p>7 about messaging, and that he is critiquing the</p> <p>8 message of the CFTA, sorry, CTFA, and, you know,</p> <p>9 in conjunction, Johnson & Johnson.</p> <p>10 Q. And so then with that</p> <p>11 interpretation, how does that impact your</p> <p>12 opinions in this matter such that you've quoted</p> <p>13 a couple of different sentences in your report?</p> <p>14 A. So my understanding, and this is</p> <p>15 based on the last paragraph in that document, is</p> <p>16 that he's a consultant with Johnson & Johnson</p> <p>17 under retainer. So at some level, this is</p> <p>18 somebody whose opinion that they respect and is</p> <p>19 able to comment on these issues. And then he's</p> <p>20 basically saying, Hey, as a friend, I gotta let</p> <p>21 you know the way that you're handling this is</p> <p>22 all wrong because you're denying any kind of</p> <p>23 relationship whatsoever, and you just don't have</p> <p>24 the footing to say that, which is, you know,</p> <p>25 exactly what I observe in, kind of, looking at</p>

<p style="text-align: right;">Page 190</p> <p>1 many, many documents over a long period of time 2 is that, you know, Johnson & Johnson is saying 3 one thing to consumers that's very definitive, 4 where behind the scenes internally, there are a 5 lot more questions and debate. 6 Q. All right. Let's talk a little 7 bit about Facts About Talc, and in particular 8 your discussion in paragraph 95 on page 3 and 4. 9 A. Okay, sure. 10 Q. You there? 11 A. Yes. 12 Q. Okay. And you state: 13 "To this day, the company 14 maintains that asbestos in talc is 15 nothing more 'an urban legend.' 16 [company's website, 'Facts about 17 Talc']. The company highlights four 18 studies which do not find an elevated 19 risk of cancer among cosmetic talcum 20 powder users. However, it does not 21 discuss the dozens of peer-reviewed 22 studies and meta-analyses which do 23 find evidence of a statistically 24 significant relationship between 25 talcum powder use and cancer. Such</p>	<p style="text-align: right;">Page 192</p> <p>1 that were really relevant to marketing issues, 2 and I didn't find a lot. Most of the documents 3 that I observed on the Facts About Talc site 4 were about testing and, like, there the presence 5 of asbestos and actually pretty technical 6 documents that, you know, I wasn't able to 7 interpret. So, you know, I didn't find a lot 8 relevant to marketing. 9 Q. So, then, is it fair to say that 10 the -- well, let me ask you the question. Do 11 you have a sense of the J&J internal documents 12 with Bates numbers that you include in your 13 table of contents list, how many of those you 14 identified yourself through searching facts 15 about talc? 16 A. I couldn't say for certain. 17 Q. Yeah, but from what you were 18 saying before, you would expect a very large 19 number of them? 20 A. My recollection is that there 21 weren't a lot of marketing documents there. 22 Q. And on the documents that 23 plaintiff's counsel provided you, I understand 24 the request that you gave them of what you were 25 looking for. How did they provide the documents</p>
<p style="text-align: right;">Page 191</p> <p>1 biased sampling of the peer-reviewed 2 literature is in direct contradiction 3 to universally accepted scientific 4 practices as well as company's 5 invitation for consumers to 'review 6 the evidence and make up your mind.' 7 Did I read that correctly? 8 A. Yes. 9 Q. And do you stand by that? 10 A. I do, yeah. 11 Q. How -- when you said you reviewed 12 Facts About Talc, what parts did you review? 13 A. I went through all of the 14 separate pages, and then, there within the 15 litigation section, there is a documents folder. 16 And I downloaded that documents folder. You 17 know, there are thousands of documents there. I 18 didn't read all of those documents. I looked at 19 many documents in those folders, but that was 20 one of the earlier sources that I consulted. 21 Q. And on the documents that you 22 downloaded and searched through, what sort of 23 searches did you conduct to, kind of, wade your 24 way through them? 25 A. Again, I was looking for things</p>	<p style="text-align: right;">Page 193</p> <p>1 to you? 2 A. So I was provided with a link to 3 Dropbox, and then there would be folders within 4 the Dropbox that would correspond to the 5 categories of documents that I had asked about. 6 And then I would just go through, kind of, one 7 by one. And as I mentioned before, you know, 8 some of those documents were relevant, some of 9 them weren't relevant. And so then I would just 10 focus on the ones that pertain to the marketing 11 issues. 12 Q. All right. I'm gonna share my 13 screen. For the record, I do have a PDF of this 14 part I'm going to be talking about. I'm going 15 to start -- the current version of the live 16 website. Do you have a sense of the last time 17 you looked at Facts About Talc, Doctor? 18 A. I've definitely looked at it 19 since I submitted my report, but I couldn't say 20 exactly how long ago it was. 21 Q. But -- fair enough. And when you 22 talk about the company highlighting four studies 23 and not discussing the case control studies are 24 trying to find what -- what do you think you're 25 referring to?</p>

<p style="text-align: right;">Page 194</p> <p>1 A. I believe it's under the studies</p> <p>2 tab, is my memory. Okay. And then, so then</p> <p>3 those are the four studies, I believe, that are</p> <p>4 mentioned. So it highlights the results of</p> <p>5 those studies. But in my search online, I think</p> <p>6 I identified, I don't know, probably between 30</p> <p>7 something studies that I found, you know, and so</p> <p>8 that's what I was referring to.</p> <p>9 Q. Okay. Did you see the part where</p> <p>10 it's right below it says "Other Studies"?</p> <p>11 A. Yes, yes.</p> <p>12 Q. Okay. And talks about the fact</p> <p>13 that there's a -- not that. Sorry:</p> <p>14 "...reconfirms that a statistical</p> <p>15 association between ovarian cancer and</p> <p>16 powder users is not found in large,</p> <p>17 prospective cohort studies, although</p> <p>18 some, but not all, case-control</p> <p>19 studies do indicate a slight</p> <p>20 statistical association. Case-control</p> <p>21 studies are studies where groups of</p> <p>22 people with a history of a specific</p> <p>23 disease are asked questions about</p> <p>24 different possible risk factors.</p> <p>25 These risk factors can include use of</p>	<p style="text-align: right;">Page 196</p> <p>1 question?</p> <p>2 MR. EWALD: Yes.</p> <p>3 MS. PARFITT: Thank you.</p> <p>4 THE WITNESS: Yes, I acknowledge</p> <p>5 that's what it says, but that's actually the</p> <p>6 exact text that I used for the study that I</p> <p>7 conducted, that we talked about earlier. So</p> <p>8 when I read this information, I said, Wow,</p> <p>9 they're really burying that information in the</p> <p>10 paragraph. It's tucked away in the middle of</p> <p>11 the paragraph. And as a reader, just</p> <p>12 linguistically, it's a very complicated</p> <p>13 sentence. You have to do a lot of work to</p> <p>14 decode what that sentence means. And so the</p> <p>15 question was, if you disambiguate that sentence</p> <p>16 for consumers, for a reader, do they come to a</p> <p>17 different impression? And at least I found</p> <p>18 initial pilot evidence to suggest, yeah, that</p> <p>19 even today, presenting it as just, oh, and by</p> <p>20 the way, there's, this statistical association</p> <p>21 masks a reality for consumers that appears to</p> <p>22 change their beliefs and their trust in the</p> <p>23 company.</p> <p>24 BY MR. EWALD:</p> <p>25 Q. Now, hold on. You were -- when I</p>
<p style="text-align: right;">Page 195</p> <p>1 certain products in the past. One</p> <p>2 potential reason that some have found</p> <p>3 slight statistical associations is the</p> <p>4 potential for an overestimation of the</p> <p>5 true association due to 'recall bias.'</p> <p>6 Recall bias is when people with a</p> <p>7 disease are more likely to</p> <p>8 overestimate their exposure to these</p> <p>9 risk factors than people without that</p> <p>10 disease. In these studies, women who</p> <p>11 know they have ovarian cancer will try</p> <p>12 hard to remember anything that might</p> <p>13 be important to explain why they got</p> <p>14 this terrible disease, which can</p> <p>15 artificially make it appear that women</p> <p>16 with cancer use more talcum powder."</p> <p>17 Did I read that correctly?</p> <p>18 A. You read it correctly, yes.</p> <p>19 Q. And so you acknowledge that on</p> <p>20 Facts About Talc section about studies, they</p> <p>21 discussed the case-control studies?</p> <p>22 MS. PARFITT: I'm going to object to</p> <p>23 the question, John, as I appreciate. Is he</p> <p>24 acknowledging that that's what you just read is</p> <p>25 what appears on Facts About Talc? Is that the</p>	<p style="text-align: right;">Page 197</p> <p>1 asked you earlier about this pilot study that</p> <p>2 you termed it, that you didn't include in your</p> <p>3 report whether you're relying on it for your</p> <p>4 opinions, you said no, correct?</p> <p>5 A. No, I'm not relying on it for my</p> <p>6 opinions. No, no. But I think that -- you're</p> <p>7 asking, do I acknowledge that they're saying</p> <p>8 that, oh, okay, there are some studies that find</p> <p>9 it. But, yes, even here, as they're saying it,</p> <p>10 they're burying the lead. The way that</p> <p>11 information is presented is confusing. And I</p> <p>12 don't, given my years of doing this, my many</p> <p>13 years of doing this, I don't think I needed to</p> <p>14 run a study to confirm that fact. I did because</p> <p>15 I was curious and I was interested. But after a</p> <p>16 very long time of understanding how people</p> <p>17 decipher information and make decisions based on</p> <p>18 that information, I thought, Wow, this is a</p> <p>19 really convoluted way to present this</p> <p>20 information.</p> <p>21 Q. So you said "burying the lead."</p> <p>22 Are you suggesting that the only appropriate way</p> <p>23 to convey this information is if it precedes the</p> <p>24 cohort study discussion?</p> <p>25 MS. PARFITT: Objection. Misstates</p>

<p style="text-align: right;">Page 198</p> <p>1 his testimony.</p> <p>2 THE WITNESS: No, that wouldn't be my</p> <p>3 claim. My claim is just that you have the</p> <p>4 majority of the page that is saying there's no</p> <p>5 effect, no effect, no effect. And basically</p> <p>6 makes it read like these are the only studies</p> <p>7 out there. And then there's a very technical,</p> <p>8 difficult to read paragraph that says, well, and</p> <p>9 there might be some other studies that find</p> <p>10 something different. But even in acknowledging</p> <p>11 that there's counter evidence, you know, they're</p> <p>12 creating confusion for consumers.</p> <p>13 BY MR. EWALD:</p> <p>14 Q. Right. So in your report, on</p> <p>15 page -- on paragraph 95, you say:</p> <p>16 "However, it...</p> <p>17 As in Facts About Talc:</p> <p>18 "...does not discuss the dozens</p> <p>19 of peer-reviewed studies and</p> <p>20 meta-analyses which do find evidence</p> <p>21 of a statistically significant</p> <p>22 relationship between talcum powder use</p> <p>23 and cancer."</p> <p>24 And that's not correct, right?</p> <p>25 MS. PARFITT: Objection, misstates his</p>	<p style="text-align: right;">Page 200</p> <p>1 add the word "adequately" or "fairly" or</p> <p>2 something like that. I think that's fair.</p> <p>3 Yeah.</p> <p>4 BY MR. EWALD:</p> <p>5 Q. All right. Doctor, have you seen</p> <p>6 what the American Cancer Society has to say</p> <p>7 about the question of whether or not talc causes</p> <p>8 of ovarian cancer?</p> <p>9 A. The document that you have on the</p> <p>10 screen, I don't recall ever seeing this document</p> <p>11 before.</p> <p>12 Q. Have you reviewed others --</p> <p>13 MS. PARFITT: John, are you marking</p> <p>14 this?</p> <p>15 MR. EWALD: I am marking this. Hold</p> <p>16 on one second.</p> <p>17 MS. PARFITT: I wasn't looking at</p> <p>18 screen. I didn't even know it came up. So</p> <p>19 sorry.</p> <p>20 MR. EWALD: I'm going to mark Exhibit</p> <p>21 13, PDF of the Facts About Talc studies page.</p> <p>22 EXHIBIT NO. 13: Studies - Facts About</p> <p>23 Talc.</p> <p>24 MS. PARFITT: Okay.</p> <p>25 MR. EWALD: And we'll mark this as</p>
<p style="text-align: right;">Page 199</p> <p>1 testimony and the evidence in this report.</p> <p>2 THE WITNESS: Yeah, I would say, you</p> <p>3 know, there is -- you know, I would -- I stand</p> <p>4 by that comment because there is no kind of</p> <p>5 equal treatment or acknowledgment, and, you</p> <p>6 know, we could do more studies. But my strong</p> <p>7 suspicion is that, you know, the majority of</p> <p>8 consumers don't even scroll that far down the</p> <p>9 page or read that paragraph in its entirety.</p> <p>10 And somebody just looking at this information</p> <p>11 would get a very different impression than what</p> <p>12 I believe the truth is.</p> <p>13 BY MR. EWALD:</p> <p>14 Q. I want to be clear on this one,</p> <p>15 Doctor. So when, in your mind, because the</p> <p>16 website does not give equivalent space to the</p> <p>17 case-control studies as it does the cohort</p> <p>18 studies, it is equivalent to, as you state in</p> <p>19 your report, it does not discuss the case</p> <p>20 control studies at all?</p> <p>21 MS. PARFITT: Objection to form.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. That's the same?</p> <p>24 MS. PARFITT: Objection to form.</p> <p>25 THE WITNESS: Yeah, you know, I might</p>	<p style="text-align: right;">Page 201</p> <p>1 Exhibit 14. And "this" being American Cancer</p> <p>2 Society Cancer Facts and Figures 2024.</p> <p>3 EXHIBIT NO. 14: American Cancer</p> <p>4 Society Cancer - Facts and Figures</p> <p>5 2024.</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Doctor, you said you don't think</p> <p>8 you've seen this one.</p> <p>9 Have you seen any other statements by</p> <p>10 the American Cancer Society as it relates to</p> <p>11 talc and ovarian cancer?</p> <p>12 A. I don't know.</p> <p>13 Q. And if we look at the different</p> <p>14 cancers --</p> <p>15 MS. PARFITT: Just again, if I -- he</p> <p>16 has not seen this document before, the 2024</p> <p>17 cancer. So I know you want to take him to,</p> <p>18 probably, a page. I bet we could bet money on</p> <p>19 which one you're taking him to, but he hasn't</p> <p>20 seen the document at all. So maybe if you can</p> <p>21 give us some guidance. It's multi -- as we both</p> <p>22 know, it's a lot of pages.</p> <p>23 MR. EWALD: Yeah, hold on.</p> <p>24 MS. PARFITT: And so unless I can.</p> <p>25 MR. EWALD: Put it in the chat?</p>

<p style="text-align: right;">Page 202</p> <p>1 MS. PARFITT: I can provide him with a</p> <p>2 copy of the whole document.</p> <p>3 MR. EWALD: That's fine. I'll put the</p> <p>4 full document in the chat.</p> <p>5 MS. PARFITT: Give me a moment and</p> <p>6 I'll give him a copy as well. John, for the</p> <p>7 record, I'm showing the doctor a copy of the</p> <p>8 Cancer Facts and Figures, 2024.</p> <p>9 MR. EWALD: Great.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MS. PARFITT: Okay. And just for the</p> <p>12 record, it is -- he's not seen this before, and</p> <p>13 it's 82 pages.</p> <p>14 MR. EWALD: Okay. Hold on one second.</p> <p>15 Okay. So for this, and it is 82 pages, it</p> <p>16 talked about a lot of different cancers. We are</p> <p>17 going to focus on ovary, which is on page 22.</p> <p>18 THE WITNESS: You said 82?</p> <p>19 MS. PARFITT: No.</p> <p>20 MR. EWALD: 22.</p> <p>21 THE WITNESS: Twenty-two. Okay.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. And if I put it up on the screen</p> <p>24 so everybody can see. All right. And starts on</p> <p>25 page 22, talks about incidents trends, and new</p>	<p style="text-align: right;">Page 204</p> <p>1 answer your question, which is, no, it doesn't.</p> <p>2 I've lost the screen here. Oh, here you are.</p> <p>3 Okay.</p> <p>4 No, it doesn't change my conclusion,</p> <p>5 because that's not what Johnson & Johnson is</p> <p>6 telling people. The public statements are not:</p> <p>7 The weight of the evidence does not support.</p> <p>8 They're saying: Does not support. You know,</p> <p>9 there's no evidence. And that's very different.</p> <p>10 You know, as we've talked about already, I think</p> <p>11 it's very different to say there is no evidence</p> <p>12 or, you know, it's perfectly safe than to make a</p> <p>13 statement like "the weight of the evidence does</p> <p>14 not support." So, no, for what I'm speaking</p> <p>15 to -- and obviously, I'm not speaking to</p> <p>16 causation at all.</p> <p>17 BY MR. EWALD:</p> <p>18 Q. And in making that and offering</p> <p>19 that opinion as to what is the appropriate way</p> <p>20 to articulate the state of the science to</p> <p>21 consumers, what authorities do you rely on?</p> <p>22 A. Again --</p> <p>23 MS. PARFITT: Objection, form.</p> <p>24 THE WITNESS: -- that's directly my</p> <p>25 expertise. And so that when consumers</p>
<p style="text-align: right;">Page 203</p> <p>1 cases and deaths and risk factors. And under</p> <p>2 "Risk factors," that's where it talks about a</p> <p>3 variety of them. The final sentence, do you see</p> <p>4 that? Where it says:</p> <p>5 "The weight of the evidence does</p> <p>6 not support an association between</p> <p>7 ovarian cancer and genital exposure to</p> <p>8 talc based powder."</p> <p>9 A. I do see where it says that</p> <p>10 under -- you're talking about the paragraph that</p> <p>11 starts with "Risk factors"?</p> <p>12 Q. Yes, sir.</p> <p>13 A. Yes. Okay. Yep, I see that.</p> <p>14 Q. And does a determination by an</p> <p>15 organization like the American Cancer Society</p> <p>16 the weight of evidence does not support an</p> <p>17 association between ovarian cancer and genital</p> <p>18 exposure talc based powder, have any impact on</p> <p>19 your opinions in this case?</p> <p>20 MS. PARFITT: Object to the question</p> <p>21 that misrepresents what that document is and</p> <p>22 what that document actually says and who</p> <p>23 sponsored that document.</p> <p>24 THE WITNESS: So I don't know anything</p> <p>25 about the origin, but -- but I think I can still</p>	<p style="text-align: right;">Page 205</p> <p>1 understand statements, they treat absolute</p> <p>2 statements very differently than statements that</p> <p>3 are hedging or conditional or something like</p> <p>4 that. So we talked before about, you know, pure</p> <p>5 natural spring water versus pure natural spring</p> <p>6 water with 0.001 percent additives, that people</p> <p>7 treat those qualitatively different. They're on</p> <p>8 completely opposite sides of the scale of, would</p> <p>9 you be interested in purchasing this product?</p> <p>10 And so there -- there's -- and that's just not</p> <p>11 my own -- I mean, that is a published study that</p> <p>12 I authored, but there are dozens of studies</p> <p>13 which make very similar points about, you know,</p> <p>14 how consumers understand information.</p> <p>15 BY MR. EWALD:</p> <p>16 Q. Well, I understand that from a --</p> <p>17 well, let me ask you this. When you said</p> <p>18 exactly what your expertise is in, when we</p> <p>19 talked about your expertise earlier in the day,</p> <p>20 you testified that you have not published on any</p> <p>21 article in the peer-reviewed literature that</p> <p>22 discusses how a company should articulate to its</p> <p>23 consumers potential health risk of its product,</p> <p>24 right?</p> <p>25 MS. PARFITT: Objection.</p>

<p style="text-align: right;">Page 206</p> <p>1 THE WITNESS: And just to clarify, we</p> <p>2 would never make any kind of -- in the kind of</p> <p>3 research that I do, we would never make</p> <p>4 normative statements. We would never make, you</p> <p>5 know, here's an empirical result telling</p> <p>6 companies what they ought to do. We're</p> <p>7 investigating the underlying psychology.</p> <p>8 So what are the rules by which, or the</p> <p>9 underlying psychological mechanisms that people</p> <p>10 use to navigate the world around them, to decide</p> <p>11 what kind of products they want to purchase, to</p> <p>12 evaluate all kinds of information. And so we</p> <p>13 would talk about a more generalized principle.</p> <p>14 And one principle here that's really relevant is</p> <p>15 people treat absolutes very different than they</p> <p>16 treat, you know, non-absolutes, even if it's a</p> <p>17 shred of difference. And we know that to be</p> <p>18 true in lots of different domains and would also</p> <p>19 apply to something like health information or</p> <p>20 risks.</p> <p>21 BY MR. EWALD:</p> <p>22 Q. Okay. And when you talk about</p> <p>23 it, you wouldn't have a normative statement like</p> <p>24 you're making here, are you -- you would also</p> <p>25 agree, though, that you have not published any</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Yes. All right. So on --</p> <p>2 MS. PARFITT: John, are you done with</p> <p>3 the Facts about -- or cancer facts?</p> <p>4 MR. EWALD: I am. Thank you.</p> <p>5 MS. PARFITT: Thank you.</p> <p>6 BY MR. EWALD:</p> <p>7 Q. So, Doctor, yesterday, and I</p> <p>8 believe Ms. Parfitt referred to this earlier,</p> <p>9 that we received an email from her firm that</p> <p>10 included some website links reflecting -- well,</p> <p>11 let me put it -- some website links in</p> <p>12 connection with your review in this case. Is</p> <p>13 that fair?</p> <p>14 A. Yeah.</p> <p>15 Q. Let me start all over again.</p> <p>16 You would look at some websites and</p> <p>17 provide those links to Ms. Parfitt in connection</p> <p>18 with your work here.</p> <p>19 A. That's correct, yes.</p> <p>20 Q. I want to get into -- there's --</p> <p>21 you don't know whether probably Ms. Parfitt sent</p> <p>22 the email or who sent the email. So that's why</p> <p>23 I was trying to get away from that.</p> <p>24 I want to get a little bit sense of</p> <p>25 some of those and how, if at all, they impacted</p>
<p style="text-align: right;">Page 207</p> <p>1 paper in the scientific literature that</p> <p>2 discusses any empirical data of how companies</p> <p>3 communicate with their customers about health</p> <p>4 risk of a product, fair?</p> <p>5 MS. PARFITT: Objection.</p> <p>6 THE WITNESS: Just so I understand.</p> <p>7 So you're asking, have I published on the</p> <p>8 communication of health risks specifically?</p> <p>9 BY MR. EWALD:</p> <p>10 Q. Yes.</p> <p>11 A. No, I have not. But I have</p> <p>12 published many papers that are relevant to how</p> <p>13 consumers interpret information and specifically</p> <p>14 the kinds of information that they might weigh</p> <p>15 in this exact case. Like, for instance,</p> <p>16 statements about absolutes, or the origin of a</p> <p>17 product, or the production process, et cetera.</p> <p>18 Q. And in those papers that you</p> <p>19 published, you provided experimental research to</p> <p>20 support your findings, correct?</p> <p>21 MS. PARFITT: Objection, misstates his</p> <p>22 testimony.</p> <p>23 THE WITNESS: Yeah, I conducted</p> <p>24 experiments, correct, yes.</p> <p>25 BY MR. EWALD:</p>	<p style="text-align: right;">Page 209</p> <p>1 your review. And first one that I want to ask</p> <p>2 you about...</p> <p>3 MS. PARFITT: Hey John.</p> <p>4 MR. EWALD: Yes.</p> <p>5 MS. PARFITT: A quick question. And</p> <p>6 I'm sorry, I'm sitting down at the end of the</p> <p>7 table. I don't have a computer, so it's a</p> <p>8 little bit hard for me to hear as well at times.</p> <p>9 Did you -- when you were talking about the</p> <p>10 websites, that was something we gave you</p> <p>11 yesterday, but that was something that we</p> <p>12 realized was omitted from the Dropbox, but not</p> <p>13 something that was just recently pulled by</p> <p>14 Dr. Newman. You understand that. If you want</p> <p>15 to ask --</p> <p>16 MR. EWALD: Yes.</p> <p>17 MS. PARFITT: I just wanted to be</p> <p>18 careful. That's our error. We didn't do a very</p> <p>19 good administrative job of collecting</p> <p>20 everything.</p> <p>21 MR. EWALD: And I wasn't my point, my</p> <p>22 lack of articulateness --</p> <p>23 MS. PARFITT: No, you're fine. I</p> <p>24 can't hear down here, so no worries. We're a</p> <p>25 good team together. You can speak and I can't</p>

<p style="text-align: right;">Page 210</p> <p>1 hear. Okay.</p> <p>2 BY MR. EWALD:</p> <p>3 Q. Okay. So if I look at, one of</p> <p>4 them was for the website safecosmetics.org, is</p> <p>5 that one of them?</p> <p>6 A. I believe so.</p> <p>7 MS. PARFITT: John, again, just for</p> <p>8 the record, I'm going to just hand him what we</p> <p>9 sent to you.</p> <p>10 MR. EWALD: Yeah.</p> <p>11 MS. PARFITT: If that's all right.</p> <p>12 That will probably make it a little bit easier,</p> <p>13 but I wanted to let you know.</p> <p>14 MR. EWALD: Well, and actually I</p> <p>15 appreciate that because the email that I have</p> <p>16 was forwarded with lots of other people,</p> <p>17 internal names on it, so I was trying to avoid</p> <p>18 having to show that. So if you have that email,</p> <p>19 that'd be great.</p> <p>20 MS. PARFITT: Yes. There you go. I</p> <p>21 have the email but I've got the document that</p> <p>22 was sent.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. And so the first one that I want</p> <p>25 to talk about, I'm not going to talk about all</p>	<p style="text-align: right;">Page 212</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: None whatsoever. I know</p> <p>3 very little about this organization. And again,</p> <p>4 this wasn't used to inform my opinions. This</p> <p>5 was like, in trying to understand, okay, well,</p> <p>6 what would somebody -- what kind of search</p> <p>7 results would somebody get if they just typed in</p> <p>8 these issues? And that is one of the first</p> <p>9 websites that appears in search. And so my</p> <p>10 understanding of this, the reference list is</p> <p>11 just everything that -- or, you know, the things</p> <p>12 that I looked at but weren't necessarily things</p> <p>13 that I directly relied my opinion on.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Another one I want to ask you</p> <p>16 about was Drug Watch. And this one, we have a</p> <p>17 site, so I'll mark as Exhibit 15 the part of the</p> <p>18 webpage, safecosmetics.org, that we were looking</p> <p>19 at on chemicals/talc.</p> <p>20 EXHIBIT NO. 15: Campaign for Safe</p> <p>21 Cosmetics from safecosmetics.org site.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. And for Exhibit 16 for</p> <p>24 drugwatch.com, I'll have a PDF of this webpage,</p> <p>25 Talcum Powder - "Is Talc in Makeup Safe?" This</p>
<p style="text-align: right;">Page 211</p> <p>1 of them, is the safecosmetics.org website, which</p> <p>2 at least has a name, Campaign For Safe</p> <p>3 Cosmetics, CSC, and it talks about talc. Do you</p> <p>4 see that?</p> <p>5 A. Yeah.</p> <p>6 Q. This is something that you</p> <p>7 reviewed in connection with your opinions in</p> <p>8 this case.</p> <p>9 A. Yeah, I wouldn't say that I</p> <p>10 relied on it maybe, to, for reference, those</p> <p>11 websites that I identified, basically, I was</p> <p>12 trying to simulate, okay, if a consumer wanted</p> <p>13 to understand this issue and went online and</p> <p>14 Googled "talcum powder" or "talcum powder and</p> <p>15 cancer," what would come up? And at least the</p> <p>16 way that the Google algorithm understands me,</p> <p>17 these are some of the initial websites that came</p> <p>18 up. Kilmer House is not one of those, but these</p> <p>19 are basically, okay, well, what would be the</p> <p>20 exercise of a person who's trying to educate</p> <p>21 themselves about this issue?</p> <p>22 Q. Do you have any understanding of</p> <p>23 Campaign for Safe Cosmetics' reputation for</p> <p>24 reliable statements of the scientific</p> <p>25 literature?</p>	<p style="text-align: right;">Page 213</p> <p>1 is also something that you looked at?</p> <p>2 EXHIBIT NO. 16: "Is Talc in Makeup</p> <p>3 Safe?" from drugwatch.com site.</p> <p>4 THE WITNESS: Again, not something</p> <p>5 that I used to form my opinion, but in trying to</p> <p>6 understand what would a consumer learn about</p> <p>7 this issue, it's a website that I looked at,</p> <p>8 yes.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. Okay. And if we go down, it says</p> <p>11 an ad:</p> <p>12 "See if you qualify for a</p> <p>13 lawsuit. Were you diagnosed with</p> <p>14 ovarian cancer or mesothelioma after</p> <p>15 using talcum powder. Get a free case</p> <p>16 review."</p> <p>17 Do you see that?</p> <p>18 A. I do see it, yes.</p> <p>19 Q. And you have an understanding as</p> <p>20 to who Drug Watch's partners are and which law</p> <p>21 firms are involved in this joint endeavor?</p> <p>22 A. None whatsoever.</p> <p>23 Q. Yeah. Do you have an</p> <p>24 understanding of -- well, let me put it this</p> <p>25 way. One of the materials that I saw in your</p>

<p style="text-align: right;">Page 214</p> <p>1 reference list is one of the complaints, legal</p> <p>2 complaints for the MDL. Did you review that?</p> <p>3 A. Yes, I did. Yeah.</p> <p>4 Q. Do you have an understanding as</p> <p>5 to how many cases are part of this MDL</p> <p>6 proceeding?</p> <p>7 A. Not with any kind of specificity,</p> <p>8 no.</p> <p>9 Q. Do you have an understanding as</p> <p>10 to the amount and coverage of marketing by</p> <p>11 plaintiff's firms about talc and ovarian cancer</p> <p>12 that has happened over the years?</p> <p>13 A. No, I do not.</p> <p>14 Q. Do you take that into account at</p> <p>15 all when you were considering impressions that</p> <p>16 Johnson & Johnson's statements may have on</p> <p>17 consumers?</p> <p>18 MS. PARFITT: Objection.</p> <p>19 THE WITNESS: Again, I mean, what I</p> <p>20 was asked to review and to look into in this</p> <p>21 case are, you know, essentially, what did J&J</p> <p>22 communicate about their products and what did</p> <p>23 they know internally? And so, you know, I</p> <p>24 didn't really start to look at all of the other</p> <p>25 bodies and players that are involved. I</p>	<p style="text-align: right;">Page 216</p> <p>1 consumers believed about Johnson's</p> <p>2 Baby Powder was central to what they</p> <p>3 believed about the Johnson's Baby</p> <p>4 brand; and what they believed about</p> <p>5 the Johnson's Baby brand was central</p> <p>6 to what they believed about Johnson &</p> <p>7 Johnson. At the core of all that was</p> <p>8 not a belief about Johnson Baby</p> <p>9 Powder's smoothness, or absorbency, or</p> <p>10 fragrance; rather, it was trust.</p> <p>11 Trust in the product and more</p> <p>12 importantly, trust in the company."</p> <p>13 I read that correct so far?</p> <p>14 A. Yeah, absolutely.</p> <p>15 Q. Then you say:</p> <p>16 "And the effects of that trust in</p> <p>17 this case are immense. When consumers</p> <p>18 may have encountered concerns about</p> <p>19 the safety of JBP and talc, those</p> <p>20 concerns were not evaluated tabula</p> <p>21 rasa - devoid of any pre-existing</p> <p>22 expectations. Rather, those concerns</p> <p>23 were evaluated against generations of</p> <p>24 advertising which strategically</p> <p>25 portrayed the company as trustworthy,</p>
<p style="text-align: right;">Page 215</p> <p>1 understand there's a lot of complexity on this</p> <p>2 issue. I was looking at a very narrow segment.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. Well, then let's look at your</p> <p>5 report. Hold on. And I want to look at the</p> <p>6 very end of the substantive report. I have it</p> <p>7 up here. You can also look at your paper copy.</p> <p>8 A. Yeah.</p> <p>9 Q. You state on page 25, paragraph</p> <p>10 99:</p> <p>11 "The marketing issues in this</p> <p>12 case are of central importance to</p> <p>13 understanding how the company affected</p> <p>14 and continues to affect consumers'</p> <p>15 beliefs about JBP and the health</p> <p>16 concerns regarding talc. The</p> <p>17 company's marketing strategy for JBP</p> <p>18 was not simply to make consumers aware</p> <p>19 of products and communicate the</p> <p>20 product's benefits. Rather Johnson &</p> <p>21 Johnson acted to target consumers'</p> <p>22 emotions and their core appreciations</p> <p>23 of trust, rooted in the sacred bond</p> <p>24 between mother and child. As the</p> <p>25 company's documents indicate, what</p>	<p style="text-align: right;">Page 217</p> <p>1 innocent, and first and foremost,</p> <p>2 concerned about customers' safety and</p> <p>3 wellbeing. As a result, the company's</p> <p>4 unequivocal denials of any wrongdoing</p> <p>5 or potential harm from talc had, and</p> <p>6 continue to have, an outsized impact</p> <p>7 on consumers' beliefs and behaviors."</p> <p>8 Did I read that correctly?</p> <p>9 A. You did, yes.</p> <p>10 Q. And so there you were talking</p> <p>11 about that second segment that I read, just</p> <p>12 read, when consumers may have encountered</p> <p>13 concerns about the safety of JBP, how the</p> <p>14 consumers evaluated those concerns, and the</p> <p>15 results of the company's unequivocal denials on</p> <p>16 consumers' beliefs and behaviors, right?</p> <p>17 A. That's correct, yes.</p> <p>18 Q. What, if any, evidence do you</p> <p>19 have with those conclusions that I just stated?</p> <p>20 A. I mean, that is speaking to my</p> <p>21 expertise. That is the value of what a</p> <p>22 psychological understanding of consumer behavior</p> <p>23 provides that it's not, you know, going way back</p> <p>24 to some of the conversations that we were having</p> <p>25 this morning about, you know, the blind taste</p>

<p style="text-align: right;">Page 218</p> <p>1 test, Coke versus Pepsi, or the Rabin article, 2 that, you know, I think there's a general 3 perception in the public that, you know, what 4 companies are essentially doing is just talking 5 about the product attributes, and consumers are 6 perfectly rational, and they're just buying 7 based on that. 8 And the reality is something very 9 different. And that's what decades of 10 psychology have taught us about the nature of 11 consumer behavior. And so when Johnson & 12 Johnson says, Hey, our product is safe, because 13 there is that trust that's been developed for 14 decades and decades, that carries with it an 15 enormous amount of weight, and I think it's 16 important to acknowledge that Johnson & Johnson 17 is aware of this fact, right. They're in their 18 own marketing meetings. They're talking about, 19 Look, trust is the number one reason why people 20 are buying our products; it's central to our 21 brand; it's central to our brand strategy. And 22 in fact, even in one of the documents they 23 mentioned, and one of the benefits is that it 24 protects us in cases of crises. And in cases of 25 crises, then that trust really pays off for us.</p>	<p style="text-align: right;">Page 220</p> <p>1 impact on consumers' beliefs and 2 behaviors." 3 What, if anything, do you have in the 4 way of specific data to support that statement? 5 A. Sure. There are a number of 6 peer-reviewed studies which have looked 7 precisely at the issue of, for instance, 8 communications about public health crises and 9 what is the role of trust? And to summarize 10 many studies in this literature, basically, 11 trust is the critical factor. So if there's a 12 potential crisis about a product, the thing that 13 makes or breaks whether or not the consumers 14 believe the statements of the company is 15 completely explained by their trust, and that 16 trust in the company has an outside effect than 17 on their purchase decision. So that's not 18 directly data that I collected, but those are 19 kind of well-established patterns in the 20 literature. 21 Q. Okay, tell me what article you're 22 referring to. 23 A. Sure. Okay, let's see. At some 24 point, I did make note of -- okay, so there's a 25 2008 "Risk aversion and brand loyalty: The</p>
<p style="text-align: right;">Page 219</p> <p>1 So this is a smart strategy. 2 And so, you know, consumers aren't 3 able to fairly evaluate, okay, what's all of the 4 evidence out there? And just like the exercise 5 that we went through where they're looking at 6 different websites, Well, okay, I'm looking at 7 different information, but if Johnson & Johnson 8 is telling me that it's safe, it must be safe, 9 because they've been telling me I can trust them 10 for 100 years. And that, you know, that is, I 11 think, the real value of what psychology 12 provides in understanding this case and the 13 marketing issues at play. 14 Q. Well, you talked again about the 15 Coke example, but as we discussed, for those 16 types of published studies, there is empirical 17 evidence, experimental studies that are 18 conducted to support those conclusions, correct? 19 A. Correct, yes. 20 Q. Okay. And when you say here: 21 "As a result, the company's... 22 That is, Johnson & Johnson's: 23 "...unequivocal denials of any 24 wrongdoing or potential harm from talc 25 had, and continue to have, an outsized</p>	<p style="text-align: right;">Page 221</p> <p>1 mediating role of brand trust and brand affect." 2 And that's in the Journal of Product and Brand 3 Management. Specifically on the issues of 4 trust, another article, 2016 "Brand 5 relationships and risk: Influence of risk 6 avoidance and gender on brand consumption." You 7 know, those are -- those are a couple, but we're 8 not talking about boutique or bespoke findings. 9 I mean, it's part of a much larger pattern that 10 what consumers understand to be true about what 11 companies say about their products is determined 12 by trust. That if we want to say, well, what's 13 the psychological factor that really explains 14 it? Well, it's trust. And I don't think that's 15 a controversial point about the nature of 16 psychology or consumer behavior. 17 Q. Well, if we're talking about the 18 specific facts that you're discussing in this 19 case, and that you are offering opinions to a 20 reasonable degree of professional certainty 21 about, is it your position that this assertion: 22 "As a result, the company's 23 unequivocal denials, any wrongdoing or 24 potential harm from talc, had 25 continued to have, an outsized impact</p>

<p style="text-align: right;">Page 222</p> <p>1 on consumers beliefs and behaviors." 2 Is true for what period of time? 3 A. Well, I would -- I mean, I would 4 say starting, you know, in 1982. And I don't 5 know, I don't know about the -- you know, 6 currently if you looked at things -- but again, 7 you know, the study that we were, were talking 8 about before, where the information about, well, 9 there's some studies that find a statistical 10 association would suggest that even currently to 11 this day. 12 But it's very complicated. One thing 13 that we would do in any kind of psychological 14 study is remove information about the company 15 itself so it's not influencing people. We don't 16 want people's preexisting beliefs to come to the 17 table. So he would say, in the absence of that 18 information, what kinds of psychological 19 principles are at play. And so it would be hard 20 to conduct the study in the appropriate manner, 21 using Johnson & Johnson specifically, or naming 22 Johnson & Johnson, because I think he would 23 bring into that a lot of other preexisting, you 24 know, beliefs from consumers. 25 Q. So I'm a little confused. I</p>	<p style="text-align: right;">Page 224</p> <p>1 consumers on the Facts About Talc website. And, 2 as we discussed before, you know, I think even 3 now, the way that that information is 4 communicated to consumers is not giving them the 5 fair ability to make up their own minds about 6 the issue; that it's presenting things in a very 7 skewed way. 8 BY MR. EWALD: 9 Q. Okay. But you -- so you're 10 talking about, on one end, what is happening 11 from what Johnson & Johnson is projecting. But 12 there's the other piece here that we're talking 13 about, right, which is, what level of trust do 14 consumers currently have in the Johnson & 15 Johnson brand and specifically the talc product, 16 fair. 17 A. Sure, yes. 18 Q. Right. And so what do you know 19 about what currently is the state of consumer 20 trust in Johnson & Johnson and specifically the 21 talc brand? 22 MS. PARFITT: Objection to form. 23 THE WITNESS: The market research data 24 that I reviewed isn't current data. But I can 25 answer your question for periods of time that</p>
<p style="text-align: right;">Page 223</p> <p>1 thought I heard you say that you couldn't say 2 currently or not whether it's true, but your 3 sentence that I just read said "the company's 4 unequivocal denials of any wrongdoing or 5 potential harm from talc had, and continue to 6 have, an outsized impact on consumers' beliefs." 7 And do you agree with me that "continue to have" 8 means it's still happening? 9 A. Yeah. That is my expert opinion, 10 yes. 11 Q. Okay. And in doing that, for 12 example, let's go back to the MDL litigation 13 example. I'll represent to you that there are 14 thousands of plaintiffs that have filed lawsuits 15 against Johnson & Johnson over their talc use 16 and subsequent ovarian cancer. 17 Are all of those individuals, do they 18 have an outsized impact on their consumer 19 beliefs? 20 MS. PARFITT: Objection, form. 21 THE WITNESS: I don't -- you know, 22 again, I'm thinking here about the way in which 23 the company is communicating information. And 24 if we were going to talk about currently, then 25 it's like, what information is available to</p>	<p style="text-align: right;">Page 225</p> <p>1 are basically through the eighties, through the 2 early 2000s, where Johnson & Johnson is 3 collecting their own data about how do people 4 perceive our brand? Why are people purchasing 5 Johnson & Johnson? What do they say about it? 6 And at the very top of that list is trust. 7 People perceive Johnson & Johnson as 8 trustworthy, as a caregiver, as synonymous with 9 safety, a brand that's not going to hurt me. 10 These are all directly quotes from Johnson & 11 Johnson's market research. So I'm just going 12 back to the data that they collected, which 13 said, Look, what's central to our brand is 14 trust; that's why people are coming to us. 15 BY MR. EWALD: 16 Q. Okay. We're talking about the 17 data that Johnson & Johnson collected, and 18 they're saying -- let's take a look at paragraph 19 91 of your report. Let me know when you're 20 there. 21 A. Yes. Okay, I'm here. 22 Q. States, "In 2020..." or you 23 state: 24 "In 2020, Johnson & Johnson 25 announced the discontinuation of</p>


<p style="text-align: right;">Page 226</p> <p>1 Talc-based Johnson's Baby Powder in 2 U.S. and Canada [J&J Media Statement 3 May 19, 2020]. The stated reason for 4 discontinuing the product was 5 declining demand 'due in large part to 6 changes in consumer habits and fueled 7 by misinformation around the safety of 8 the product and a constant barrage of 9 litigation advertising.'" Did I read that correctly? 10 A. You did, yes. 11 Q. And do you have any basis to 12 disagree with Johnson & Johnson's statement that 13 "the change in consumer habits...fueled by 14 misinformation around the safety of the product 15 and a constant barrage of litigation 16 advertising."? 17 A. Yeah. I mean, decades of 18 internal documents which suggest something very 19 different, right? I mean, I read this 20 statement, as, you know, there's a bunch of 21 people out there that are spreading lies. And, 22 you know, because of all their lies, we had to 23 pull this product. And that creates a lot of 24 confusion and tells a very different kind of 25</p>	<p style="text-align: right;">Page 228</p> <p>1 BY MR. EWALD: 2 Q. I did. Tell me. 3 A. I'm sorry. Can you please 4 repeat. I'm getting lost here. 5 Q. Okay. So according to counsel, 6 you have taken into account. So you've taken 7 into account the impact on consumers of the 8 constant barrage of litigation advertising with 9 respect to their view of Johnson & Johnson's 10 talc. 11 A. Well, I mean, in the sense that 12 if a consumer were to look at the issue today 13 and look at what kind of evidence is available 14 to them or readily available to them, and then, 15 you know, you might say, Oh, well, then they 16 would just kind of add it up. But that's, you 17 know, what my opinion is, is that's not what's 18 happening, because people are comparing that to 19 a century of advertising that says Johnson & 20 Johnson is a trustworthy brand; it's synonymous 21 with health and safety; it's -- you know, our 22 number one priority is your safety. And that 23 advertising message worked. Johnson & Johnson 24 knows that that advertising message worked. 25 And so, you know, it's not like the</p>
<p style="text-align: right;">Page 227</p> <p>1 story than what's happening behind the scenes 2 where, you know, for a decade and a half, let's 3 say, they're, Well, look, there are safety 4 concerns about our product. We should develop 5 this cornstarch alternative. How do we replace 6 it? Et cetera, et cetera. 7 So to say that it's just a bunch of 8 smoke in the air that has eventually caused us 9 to do this, I think, communicates something very 10 different than the reality to consumers. 11 Q. Well, again, you're talking about 12 what Johnson & Johnson's mindset may or may not 13 be. I'm talking about the other piece of the 14 puzzle, which is what the consumers are hearing, 15 what they're thinking. And from what you've 16 said, you have not taken into account what 17 impact the constant barrage of litigation 18 advertising has had on consumers' views of 19 Johnson & Johnson and talc products, correct? 20 MS. PARFITT: Objection, mistakes is 21 testimony. Done just the opposite. 22 BY MR. EWALD: 23 Q. You have? Tell me. 24 MS. PARFITT: Ask the question. Ask 25 the question, John.</p>	<p style="text-align: right;">Page 229</p> <p>1 scale is an accurate measurement, that, you 2 know, that advertising puts its thumb on the 3 scale and tips things so where people aren't 4 able to fairly evaluate. So I think you could 5 say, Well, I'm taking into account, yeah, that 6 there's litigation out there, but are consumers 7 able to accurately balance that against what 8 Johnson & Johnson are telling them? My opinion 9 is not. 10 Q. And what data do you rely on for 11 the proposition that plaintiff litigation, 12 advertising of talc and ovarian cancer claims is 13 not having an outsized impact on consumers' 14 views about talc. 15 MS. PARFITT: Objection, form. 16 THE WITNESS: I mean, again, we're 17 kind of circling back to the same -- in my mind 18 -- so I don't know how to answer the question 19 any differently, that people are not, you know, 20 I'd used the term tabula rasa; they're not 21 evaluating it blank slate. And so I would -- to 22 be fair, I haven't looked directly at litigation 23 and how litigation impacts consumers' mindset 24 now. 25 And my understanding of the time</p>

<p style="text-align: right;">Page 230</p> <p>1 period that, you know, I was really</p> <p>2 investigating is not present day and things that</p> <p>3 are happening after 2020 or after the onset of</p> <p>4 litigation. I'm really trying to understand,</p> <p>5 well, what happened in the hundred years before</p> <p>6 then. So I couldn't, you know -- I guess, to be</p> <p>7 fair, I can't speak directly to how that is</p> <p>8 changing consumers' mindset now, but I also</p> <p>9 don't think that's very germane to my opinion.</p> <p>10 BY MR. EWALD:</p> <p>11 Q. Well, are you walking back your</p> <p>12 opinions in your report? Because we just talked</p> <p>13 about how you said, "As a result, the company's</p> <p>14 unequivocal denials of any wrongdoing or</p> <p>15 potential harm from talc had, and continue to</p> <p>16 have, an outsized impact on consumers' beliefs</p> <p>17 and behaviors."</p> <p>18 "Continue to have" clearly means</p> <p>19 present day, right?</p> <p>20 A. Yes, yes, yes. Yeah, yeah.</p> <p>21 Q. So you're saying that that wasn't</p> <p>22 part of your opinion?</p> <p>23 MS. PARFITT: Objection.</p> <p>24 MR. EWALD: So you misspoke?</p> <p>25 THE WITNESS: No, no. It's very</p>	<p style="text-align: right;">Page 232</p> <p>1 effect on their psychology today.</p> <p>2 BY MR. EWALD:</p> <p>3 Q. So I would like the court</p> <p>4 reporter to, please, read back the question and</p> <p>5 answer that preceded, I think it was one before</p> <p>6 that where we just talked about where he talked</p> <p>7 about 100 years.</p> <p>8 And do you have a sense of what I'm</p> <p>9 talking about, Leila?</p> <p>10 THE REPORTER: I can check for you. I</p> <p>11 would rather play it back than read it back, if</p> <p>12 that's okay.</p> <p>13 MR. EWALD: Whatever you find easier,</p> <p>14 I hate listening to my voice. But go ahead.</p> <p>15 THE REPORTER: One second. Did you</p> <p>16 want just the answer, counsel?</p> <p>17 MR. EWALD: Question and answer.</p> <p>18 THE REPORTER: Okay, let me know if</p> <p>19 this is correct. One second.</p> <p>20 [Audio played from 229;10 to 230;9]</p> <p>21 MR. EWALD: Thank you, Leila.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. Okay. So I want to be real</p> <p>24 clear, because this is important on the scope of</p> <p>25 your opinions.</p>
<p style="text-align: right;">Page 231</p> <p>1 much -- it's very much part of my opinion.</p> <p>2 BY MR. EWALD:</p> <p>3 Q. Right. You just said a moment</p> <p>4 ago that you weren't really focused on present</p> <p>5 day or when litigation was; you were focusing on</p> <p>6 earlier stuff over the past 100 years.</p> <p>7 A. I --</p> <p>8 Q. (Inaudible) --</p> <p>9 MS. PARFITT: Objection.</p> <p>10 BY MR. EWALD:</p> <p>11 Q. -- you answer?</p> <p>12 MS. PARFITT: Objection.</p> <p>13 THE WITNESS: Mr. Ewald, I believe</p> <p>14 that misstates what I was saying. I was</p> <p>15 responding specifically to, you said, how do you</p> <p>16 know how litigation and all of this litigation</p> <p>17 is impacting people? And I admitted that, you</p> <p>18 know, I don't know exactly how litigation is</p> <p>19 changing people's mindset in the present.</p> <p>20 But I can, as an expert in this area,</p> <p>21 say that there is a long legacy of beliefs about</p> <p>22 the trustworthiness of Johnson & Johnson that</p> <p>23 has an effect on people's psychology, that had</p> <p>24 an effect of people's psychology, and I have</p> <p>25 every reason to believe continues to have an</p>	<p style="text-align: right;">Page 233</p> <p>1 Do your opinions that you're offering</p> <p>2 in this case go to the present day?</p> <p>3 A. In what sense?</p> <p>4 Q. Are you offering opinions about</p> <p>5 the impact that Johnson & Johnson's statements</p> <p>6 have had on consumers up to the present day?</p> <p>7 A. You know, I realize I'm also</p> <p>8 getting a little bit tired, and I should</p> <p>9 probably take a break because I'm stammering.</p> <p>10 But I definitely want to answer your question.</p> <p>11 Q. Please do and then you can take a</p> <p>12 break.</p> <p>13 A. What's that?</p> <p>14 Q. Please do, and then you can take</p> <p>15 a break.</p> <p>16 A. Sure. Of course. With respect</p> <p>17 to talc products, so I wasn't asked to review</p> <p>18 perceptions of Johnson & Johnson, the brand, or</p> <p>19 litigation about Johnson & Johnson, or what's</p> <p>20 happening in, you know, public opinion about</p> <p>21 Johnson & Johnson or the litigation. I was</p> <p>22 asked to review materials related to the</p> <p>23 marketing of talc products.</p> <p>24 Talc products were discontinued in</p> <p>25 2020 in Canada and the US; and then 2022</p>

<p style="text-align: right;">Page 234</p> <p>1 globally. And so the timeline that I'm talking 2 about in terms of how does their advertising and 3 how do their marketing messages impact people is 4 really relevant up to that point. I do think 5 that even today, the way that the information is 6 communicated to consumers is still biased in the 7 same way that it was historically, and that 8 there's nothing about J&J's strategy of 9 communication that seems to have changed that 10 whereas there might have been conflicting 11 evidence, or a lot of evidence, or evidence of 12 risk that they were acknowledging and taking 13 seriously for a very long time. 14 They communicated to consumers in 15 absolutes, and today continue to communicate to 16 consumers in absolutes about the safety of their 17 products. So that's the sense in which I mean 18 that things continue into present day is 19 referring to their communication about the 20 safety of their products. And I'm not able to 21 speak to what the average consumer believes 22 about Johnson & Johnson, the brand, you know, as 23 we sit here in 2024. 24 Q. Okay. Take a break. 25 MS. PARFITT: Thank you.</p>	<p style="text-align: right;">Page 236</p> <p>1 A. So there's nothing about 2 targeting per se that is wrong. What I take 3 issue with, in this case, is that Johnson & 4 Johnson had this credible evidence or credible 5 concerns about the safety of the product, and in 6 order to compensate for a loss of sales with one 7 market, they just tried to shift to a different 8 market. And there are a number of places where 9 in those marketing meetings, they're talking 10 about health concerns being a reason for the 11 powder decline. 12 So that's the main issue that I take, 13 or the main issue that I have with the use of 14 targeting here; it was targeting in light of the 15 fact that people are buying less of the product 16 and the company knows that health concerns are a 17 reason why. 18 Q. So if -- so, you're saying that 19 the -- well, wouldn't what you just said suggest 20 that the outsized impact, that the trust between 21 Johnson & Johnson and consumer that you speak 22 about in your report had already been broken 23 because of safety concerns? 24 MS. PARFITT: Objection. 25 THE WITNESS: No, I wouldn't conclude</p>
<p style="text-align: right;">Page 235</p> <p>1 -- RECESS TAKEN AT 4:17 P.M. 2 -- RESUME AT 4:33 P.M. 3 BY MR. EWALD: 4 Q. Taking a little bit of a step 5 back. 6 Do you agree that an important aspect 7 of marketing is knowing who your consumers are 8 and what their needs are? 9 MS. PARFITT: Objection, form. 10 THE WITNESS: Yes, I would agree. 11 BY MR. EWALD: 12 Q. And you also agree that, as a 13 general matter, part of marketing is targeting 14 different markets -- markets and demographics 15 where you believe you have current consumers or 16 potential consumers, fair? 17 A. Fair, yes. 18 Q. And so if you look at page 20 of 19 your report and the whole paragraph that 20 precedes paragraph 77 going through 81, can you 21 walk me through on your opinions in those 22 paragraphs. 23 Is it your opinion that Johnson & 24 Johnson wrongfully targeted certain 25 demographics?</p>	<p style="text-align: right;">Page 237</p> <p>1 that. I would say that you had a trend over 2 time where you had a large population of 3 consumers that are buying less of the product, 4 and they're saying that health concerns are a 5 reason. You know, we can look to -- I'd have to 6 see when the last consumer research study that I 7 had access to is. But, you know, certainly, as 8 late as the 1990s, there's market research that 9 shows that there's still considerable trust in 10 the brand. I would say that in my reading, it 11 was shifting, but there's nothing that I 12 encountered which would suggest to me that that 13 trust was, as you said, broken. 14 BY MR. EWALD: 15 Q. On another topic, one of the -- 16 hold on. 17 -- OFF THE RECORD AT 3:48 P.M. 18 -- RESUME AT 3:49 P.M. 19 BY MR. EWALD: 20 Q. On Exhibit 17, I'm marking a copy 21 of O'Brien 2020. And this is one of the 22 epidemiological articles that you have on your 23 reference list, correct? 24 EXHIBIT NO. 17: Dr. O'Brien's article 25 published in JAMA, "Association of</p>

<p style="text-align: right;">Page 238</p> <p>1 Powder Use in the Genital Area With</p> <p>2 Risk of Ovarian Cancer."</p> <p>3 THE WITNESS: I believe so, yes.</p> <p>4 MS. PARFITT: And, John, give me a</p> <p>5 moment.</p> <p>6 MR. EWALD: Sure.</p> <p>7 MS. PARFITT: I'll get him a copy.</p> <p>8 I'm going to look for one here, but right now,</p> <p>9 I'm handing him mine for just speed, if that's</p> <p>10 okay. I am going to tell you mine is</p> <p>11 highlighted, but I don't think it will mean</p> <p>12 anything to him. But I just want to be</p> <p>13 transparent.</p> <p>14 MR. EWALD: I definitely appreciate</p> <p>15 that. Thank you. And you know, I don't think</p> <p>16 to ask you certainly logical questions or much</p> <p>17 about this, but I do have a couple of questions.</p> <p>18 And if we go to -- all the way through to the</p> <p>19 discussion section, which at least on the PDF is</p> <p>20 on page 8 of 11, it's page 56 of the journal.</p> <p>21 And then actually go a little bit further on the</p> <p>22 following page. Do you see the paragraph that</p> <p>23 starts "One of the main concerns...?"</p> <p>24 A. Yes.</p> <p>25 Q. And it states:</p>	<p style="text-align: right;">Page 240</p> <p>1 And that is -- well, first of all, have you</p> <p>2 encountered this concept of recall bias and the</p> <p>3 debate over it in connection with the talc case</p> <p>4 control studies?</p> <p>5 MS. PARFITT: Objection.</p> <p>6 THE WITNESS: I've read it before,</p> <p>7 yes.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. And it says here in the</p> <p>10 Schildkraut studies where they are stratifying</p> <p>11 the results by year interview based on timing of</p> <p>12 the first major talc lawsuits, describing the</p> <p>13 major talc lawsuits happen in 2014 or later. Is</p> <p>14 that consistent with your understanding?</p> <p>15 MS. PARFITT: Objection.</p> <p>16 THE WITNESS: My understanding is:</p> <p>17 That's the words that you're reading or...?</p> <p>18 BY MR. EWALD:</p> <p>19 Q. No. Is that consistent with do</p> <p>20 you have an understanding of when the first</p> <p>21 major talc lawsuits were filed?</p> <p>22 A. I don't know.</p> <p>23 Q. And if we scroll down, it's</p> <p>24 referencing footnote 30, and you see where it</p> <p>25 has article by Hsu, "Risk on all sides as 4800</p>
<p style="text-align: right;">Page 239</p> <p>1 "One of the main concerns about</p> <p>2 previous case-control studies on this</p> <p>3 topic is the possibility for recall</p> <p>4 bias, which will result in if case</p> <p>5 participants were more likely to</p> <p>6 report using powder than control</p> <p>7 participants. As highlighted by</p> <p>8 Trabert, the African American Cancer</p> <p>9 Epidemiology Study found evidence</p> <p>10 supporting this phenomenon. Based on</p> <p>11 the timing of the first major talc</p> <p>12 lawsuits, Schildkraut et al stratified</p> <p>13 their results by year of interview</p> <p>14 (earlier than 2014 versus 2014 or</p> <p>15 later), observing that among women</p> <p>16 interviewed earlier, ever use of</p> <p>17 powder in the genital area was</p> <p>18 less-strongly associated with ovarian</p> <p>19 cancer (odds ratio [OR], 1.19 [95</p> <p>20 percent confidence interval, 0.87 to</p> <p>21 1.63]), than among women interviewed</p> <p>22 later (OR, 2.91 [95 percent CI 1.70 to</p> <p>23 4.97])."</p> <p>24 I read all that, but there's only one</p> <p>25 part where I wanted to just get your take on.</p>	<p style="text-align: right;">Page 241</p> <p>1 women sue over Johnson's Baby Powder in cancer",</p> <p>2 dated September 28, 2017. Do you see that?</p> <p>3 A. I'm sorry, which reference was</p> <p>4 it? Oh, 30, okay. Yes, I see that.</p> <p>5 Q. Give me one second. Okay,</p> <p>6 Dr. Newman, that is all the questions I have for</p> <p>7 you.</p> <p>8 A. Okay.</p> <p>9 MS. PARFITT: John, could you give us</p> <p>10 just a few minutes and we'll see if there's any</p> <p>11 further redirect on our end, okay?</p> <p>12 MR. EWALD: Sure.</p> <p>13 MS. PARFITT: All right. Thank you.</p> <p>14 Just a few minutes.</p> <p>15 -- RECESS TAKEN AT 4:45 P.M.</p> <p>16 -- RESUME AT 4:50 P.M.</p> <p>17 MS. PARFITT: We have now concluded</p> <p>18 the deposition. Thank you, all.</p> <p>19 (Whereupon this examination concludes</p> <p>20 at 4:51 P.M.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 242

1 CERTIFICATE OF REPORTER
 2 CANADA
 3 PROVINCE OF ONTARIO
 4 I, Leila Heckert, CVR, the officer
 5 before whom the foregoing deposition was taken,
 6 do hereby certify that the witness whose
 7 testimony appears in the foregoing deposition
 8 was duly sworn by me; that the testimony of said
 9 witness was taken by me in shorthand using
 10 Computer Aided Realtime, to the best of my
 11 ability, and thereafter reduced to written
 12 format under my direction; that I am neither
 13 counsel for, related to, nor employed by any of
 14 the parties to the action in which the
 15 deposition was taken, and further that I am not
 16 related or any employee of any attorney or
 17 counsel employed by the parties thereto, nor
 18 financially or otherwise interested in the
 19 outcome of the action.
 20
 21
 22 
 23
 24 Leila Heckert, CVR
 25

Page 243

1 INSTRUCTIONS TO WITNESS
 2
 3 Read your deposition over carefully. It is your
 4 right to read your deposition and make changes
 5 in form or substance. You should assign a
 6 reason in the appropriate column on the erratum
 7 sheet for any change made.
 8 After making any changes in form or substance,
 9 and which have been noted on the following
 10 erratum sheet, along with the reason for any
 11 change, sign your name on the erratum sheet and
 12 date it.
 13 Then sign your deposition at the end of
 14 your testimony in the space provided. You are
 15 signing it subject to the changes you have made
 16 in the erratum sheet, which will be attached to
 17 the deposition before filing. You must sign it
 18 in front of a witness. The witness need not be
 19 a notary public. Any competent adult may
 20 witness your signature.
 21 Return the original erratum sheet promptly.
 22 Court rules require filing within 30 days after
 23 you receive the deposition.
 24
 25

Page 244

1 *** ERRATA SHEET ***
 2
 3 NAME OF CASE: In re. JOHNSON & JOHNSON TALCUM
 4 POWDER PRODUCTS MARKETING,
 5 SALES PRACTICES, AND PRODUCTS.
 6 LIABILITY LITIGATION
 7 DATE OF DEPOSITION: May 15th, 2024
 8 NAME OF WITNESS: GEORGE NEWMAN, M.D.
 9
 10 PAGE LINE FROM TO
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23
 24 _____
 25 GEORGE NEWMAN, M.D.

Page 245

1 PROVINCE OF ONTARIO
 2 TORONTO REGION
 3
 4 I, the undersigned, declare under
 5 penalty of perjury that I have read the
 6 foregoing transcript, and I have made any
 7 corrections, additions or deletions that I was
 8 desirous of making;
 9 That the foregoing is a true and
 10 correct transcript of my testimony contained
 11 therein.
 12
 13 _____
 14 GEORGE NEWMAN, M.D.
 15
 16 Subscribed and sworn to before me this ____ day
 17 of _____, 2024, at
 18 _____,
 19 (City) (Province)
 20
 21 _____
 22 (Notary Public)
 23 My Commission Expires: _____
 24
 25

[& - 19]

Page 1

<p>&</p> <p>& 1:4 2:4,6,13 2:20 3:2,3,11 3:12,12,20 5:3 5:7,20 6:8 14:24 16:9,16 20:4 21:13 44:24 47:22 48:2 49:17 52:11 53:24 54:1 55:24 56:1 56:5,25 58:25 59:22 62:9,12 62:15,18,21 63:1,2,19,23 65:24 66:1,2,6 66:13,18 71:9 75:6,22 76:7 77:1,24 79:11 82:20 83:17 84:5 86:25 89:5 90:12 91:19 93:13,19 95:8 96:2,12,16 97:15 99:22 101:15 103:12 105:8 109:15 110:25 112:2,6 117:3 129:10 132:5,8 139:17 147:7,23 148:3 150:11,12,21 151:6 153:13 156:20 161:9 161:12 162:16</p>	<p>163:19 167:12 168:5,9 169:14 169:15,18,19 171:19 173:4 174:6,20 175:8 185:13,15,24 189:9,16 190:2 204:5 214:16 215:20 216:6 218:11,16 219:7,22 222:21,22 223:15 224:11 224:14,20 225:2,5,7,10,17 225:24 226:13 227:12,19 228:9,19,23 229:8 231:22 233:5,18,19,21 234:22 235:23 236:3,21 244:3</p> <p>0</p> <p>0.001 118:10 205:6 0.01 120:11 0.87 239:20 000040596 6:16 187:13,23 000235850 5:15 97:4,6 0025188 131:4 0242 131:7 0419 157:16,21 157:23 158:1</p>	<p>158:23 05 72:12 08002 3:23</p> <p>1</p> <p>1 5:3 19:23 20:3 98:17 132:12 133:19 142:19 167:23 171:3 1.19 239:19 1.63 239:21 1.70 239:22 10 6:8 72:22 74:21 76:2 78:4 78:14 163:17 163:19 232:20 100 25:9,12 29:18 61:17,19 63:10 65:2,11 103:9 116:16 219:10 231:6 232:7 10036 3:6 11 6:12 79:3 80:23 124:1 178:10,17 238:20 11/21/23 19:23 1185 3:5 11:26 80:4 11:30 79:23 11:38 80:5 12 6:13 187:9 187:10 127 5:18</p>	<p>128 145:9 12:42 128:15 13 6:17 129:6 200:21,22 130 1:12 3:15 132 5:20 14 6:18 109:3 173:20 201:1,3 146 6:3 15 6:20 112:15 212:17,20 15th 1:13 21:18 244:7 16 6:22 212:23 213:2 16-2738 1:6 1600 3:15 163 6:8 17 5:14,17 6:16 7:3 81:15 97:2 97:5,8 187:13 187:23 237:20 237:24 172 109:13 173 109:9 174 109:22 178 6:12 18 81:15 151:16 152:17,20 1825 2:7 187 6:13 18th 3:15 176:23 19 109:13 152:17 158:21 172:15 185:6</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[19 - 334-269-2343]

Page 2

<p>226:3 1960s 112:3 167:10,25 1966 5:14,17 96:12,23 97:2,5 97:8 98:1 101:8 101:16 106:3 111:20,24 182:9 1970 92:10 1970s 125:13 129:20 142:3,8 142:11 164:18 165:18 166:13 167:10 168:1 1973 5:22 92:10 92:18 132:6,10 1974 129:9 1975 6:6,11 130:8 145:7,16 145:22 146:5 146:18 148:16 148:22,24 150:11 158:24 163:18,22 1980s 142:12 1982 112:17 114:6,10 171:17,21 222:4 1983 124:6 165:11 1985 84:16 156:21 170:9 1986 5:19 84:4 84:16 88:5</p>	<p>89:20 121:19 122:11 124:1 127:15 128:19 163:10 165:10 172:3,3 1987 114:10 1990s 237:8 1994 121:18 172:16 173:17 1997 6:16 187:13,23 1998 80:24 1:43 128:16</p>	<p>2015 165:9 2016 36:19 221:4 2017 241:2 202-783-6400 2:11 2020 225:22,24 226:3 230:3 233:25 237:21 2021 28:2 29:6 29:15,20,22 30:5,9,17,20,25 31:15 33:14 44:23 45:1,5,9 45:14,24 108:5 2022 29:23 35:24 233:25 2023 5:4,5,8,8 5:11 13:20,23 14:5 15:14 16:4 16:21 18:1,13 19:25 20:5,5 21:3,14,14,18 22:15 24:11,20 25:9 30:2 31:18 33:22 34:4,9 49:14 51:5,9,16 2024 1:13 5:10 6:19 34:15,19 201:2,5,16 202:8 234:23 244:7 245:17 21 5:6 172:17 212 3:8 6:20 213 6:22</p>	<p>215 3:16 218 2:22 22 176:1 202:17 202:20,25 229 232:20 23 20:15 21:10 21:10 230 232:20 237 7:3 242 131:16,18 25 215:9 25188 131:13 26 5:22 132:6 132:10 26989 130:22 27 20:15 28 241:2 29102 242:23 2:56 185:2</p>
	<p>2</p>		<p>3</p>
	<p>2 5:6 21:7,12 36:9 134:25 146:12 164:14 170:24 171:4 2.91 239:22 20 5:3 28:1 96:7 185:20 235:18 200 6:17 2000 121:17 20006 2:9 2000s 122:8 179:5 225:2 2008 121:17 172:19 173:18 173:19 220:25 201 6:18 2014 121:18 172:22 173:19 174:8,24 239:14,14 240:13</p>		<p>3 3:22 5:9 6:11 34:12,14 123:24 158:24 163:18,22 171:6 190:8 30 128:8 194:6 240:24 241:4 243:22 31 92:6 310 3:22 317-7180 3:25 334 2:24 334-269-2343 2:25</p>

[337-439-0707 - accurate]

Page 3

337-439-0707 2:18 34 5:9 36103 2:23 3:07 185:3 3:48 237:17 3:49 237:18	54 94:11,11 55 108:20 56 238:20 57 112:16,20	85 181:8 183:17 184:1 856 3:25 86 175:25 181:23 183:18	89:19 100:18 105:15,16 115:16 123:14 128:23 134:14 141:8 151:2 162:5 167:1,16 189:19 192:6 219:3 229:4,7 234:20
4	6 5:14 97:1,5 109:23 170:9 600 31:1,4 6th 3:5	9 9 6:3 14:10,16 18:5,16 52:6,9 53:2,9 55:17 145:22 146:2 151:5 232:20 9/17/97 186:12 91 225:19 929-8822 3:16 94 173:19 95 190:8 198:15 239:19,22 97 5:14 99 215:10 9:24 8:1 9:38 17:12 9:55 17:13	absence 222:17 absolute 205:1 absolutely 40:22 104:1 116:14 117:23 120:19 216:14 absolutes 118:5 121:9 206:15 206:16 207:16 234:15,16 absorbency 92:7 216:9 absorbent 92:8 academic 73:1 73:4
4 5:11 51:5,8 80:24 135:2 139:16,22 140:14 141:19 143:25 164:14 190:8 4.97 239:23 45 96:9,22 97:12 4800 240:25 4:17 235:1 4:33 235:2 4:45 241:15 4:50 241:16 4:51 241:20	7 7 5:18 127:11 127:13 146:13 146:16 149:10 163:10 700 2:8 70601 2:16 7214 5:19 123:18,19 127:14 75 172:15 184:18 185:6 750 31:8,11 77 235:20 790 3:8	a a.m. 8:1 17:12 17:13 80:4,5 abbreviation 69:17 ability 32:12,14 152:18 224:5 242:11 able 28:25 36:4 36:5 60:13 62:7 62:13 77:21 78:16,17 85:25 86:8,22 89:15	absent 222:17 absolutely 205:1 40:22 104:1 116:14 117:23 120:19 216:14 absolutes 118:5 121:9 206:15 206:16 207:16 234:15,16 absorbency 92:7 216:9 absorbent 92:8 academic 73:1 73:4 acceptable 119:14 accepted 40:19 191:3 access 237:7 accessing 127:18 account 79:8 214:14 227:16 228:6,7 229:5 accurate 55:21 175:9 229:1
5 5 5:12 51:13,15 51:18 80:24 140:17,18 158:21 50 25:13 92:13 130:16 131:3 501 2:15 51 5:11,12 52 129:5 5341 3:8	8 8 4:3 5:20 19:25 109:1,2 124:6 132:5,8 149:11 165:11 238:20 81 235:20 82 172:17 202:13,15,18 84 175:25 181:8 183:17		

[accurately - alarm]

Page 4

accurately 229:7	93:25 109:13 123:17 131:1	151:9	affected 41:7 215:13
acknowledge 91:13 121:11 133:13 195:19 196:4 197:7 218:16	144:23 161:15 164:20 165:15 173:7 192:5 196:5 203:22 210:14 238:21	administrative 209:19	affidavit 165:4
acknowledging 59:5 118:18 120:17,23 121:4 195:24 198:10 234:12	ad 213:11	admitted 231:17	african 239:8
acknowledg... 199:5	add 12:17 94:8 104:7 200:1 228:16	admitting 85:17	agency 125:17 167:8,24 168:25 169:4
acted 111:1 215:21	added 110:5,13	adopted 138:7	ago 44:21 145:6 146:22 158:5 193:20 231:4
actinolite 136:5 136:17	addition 12:18 98:11 158:6 164:13	adult 179:13 183:8,23 184:6 243:19	agree 27:5 63:13,17 77:15 127:10 136:25 206:25 223:7 235:6,10,12
action 242:14 242:19	additional 6:10 22:9 42:25 51:22 157:15 158:9,9,22 160:11 163:21	advantage 84:18	agreed 14:3 104:1
actions 54:2 58:1,19 60:16 60:25 83:3,14 93:8,11 95:20 95:21 117:19 118:21 142:10 148:16 174:9	additions 245:7	advertise 183:6	agreement 125:23 165:23
activities 6:5 145:24 146:4 164:16	additive 118:10 120:11	advertisements 31:25 50:2 88:10,15,17,18	ahead 64:23 69:12 85:24 89:9 95:20 96:9 131:20 154:11 232:14
activity 95:25	additives 205:6	advertising 14:19,24 16:14 29:12 58:7 61:20 63:11 65:7 67:2 79:13 83:9 119:9 183:7 216:24 226:9,17 227:18 228:8 228:19,23,24 229:2,12 234:2	aided 242:10
actual 43:24	address 57:23 76:20 105:19 114:14,22	advocate 172:5	air 227:8
actually 25:3 30:22 65:9 67:22 68:3 70:19 87:5	addresses 95:4	aeration 180:25	aisle 174:22 175:20 176:15 179:13,13 180:20 183:24 184:5
	addressing 177:3	affect 215:14 221:1	al 170:24 239:12
	adelaide 1:12		alabama 2:23
	adequately 200:1		alarm 167:15
	adjacent 33:12		
	administration 5:18 127:14		

[alfred - article]

Page 5

alfred 6:13 185:9,13 187:10,17	analyses 41:11 172:7 190:22 198:20	anyway 89:9 apart 39:11 44:22 49:6	132:15,22 141:17 142:20 143:18
algorithm 211:16	analysis 63:25 72:25 73:7 74:4 77:17 100:14	apologies 26:21 70:6 187:21	appropriate 152:15 197:22 204:19 222:20 243:6
alleged 32:16 45:6	analytical 125:19,22 126:19 165:19 165:22 166:2	apologize 42:15 66:18 107:16 107:17	appropriately 52:20
allen 2:20	anapol 3:13	appear 143:11 195:15	approximately 13:18 19:7 24:5 27:23 29:14 44:17
allowed 63:24	anapolweiss.... 3:17	appearances 137:22	april 5:9,22 34:15,19 132:6 132:10 176:23
allowing 155:7	announced 225:25	appeared 98:1 appearing 9:19 appears 21:8 71:1 150:17 151:22 171:3,6 195:25 196:21 212:9 242:7	area 7:5 31:23 84:1 112:25 115:14 154:21 166:20 174:23 231:20 238:1 239:17
alongside 95:24	announcing 88:13	appendix 98:17	argue 111:2
alternate 58:20	answer 9:14 57:10 64:15,21 81:21 92:2 100:9 109:19 110:3,9 120:1 140:19 151:23 152:11 175:17 204:1 224:25 229:18 231:11 232:5,16,17 233:10	applies 54:4 apply 53:22 73:1 169:13 206:19	argument 84:18,21 95:1 102:1 103:8
alternates 151:23	answered 60:10	applying 74:4	arguments 23:12
alternative 57:19 91:21 139:2 152:10 162:4 175:14 182:1 183:14 227:5	answering 18:4	appreciate 10:2 13:4 152:14 186:14 187:1 195:23 210:15 238:14	arrangement 28:15,19
alternatives 93:13 140:8 153:3 172:11 177:9	answers 9:6	appreciation 137:19	article 7:3 80:25 81:5 97:25 100:2 205:21 218:1 220:21 221:4 237:24 240:25
american 6:18 98:2 200:6 201:1,3,10 203:15 239:8	anticipate 37:2	appreciations 215:22	
amnesia 176:19 177:9	anticipating 85:14	approach 59:22 81:4 102:10	
amount 214:10 218:15	anybody 19:13		
amounts 124:21,25 125:10,16 135:25			

[articles - assuming]

Page 6

articles 73:5,19 237:22	142:7,16 143:1 143:11,18,22	aspect 64:5 151:13 235:6	assist 19:13
articulate 204:20 205:22	144:3,19,24,25 149:20,25	aspects 18:19 182:25	assistance 17:16 160:18 160:22,22,25
articulated 49:13 101:8	150:4,15 153:15 164:11	aspiration 5:17 97:8,17 99:23 101:15 102:3 102:12,16 105:19 108:2 112:2 179:23 180:2 182:11	associate 34:23 35:15 36:19,21 37:5
articulateness 209:22	165:12,20 166:14 167:13 167:18,20 168:1,10 169:2 169:17 170:10 170:13 178:14 181:3 190:14 192:5	assemble 160:19	associated 15:2 28:22 29:11 32:16 33:8 52:21 53:10,18 53:20 55:9,16 56:6 57:23 59:12 60:1,8,18 61:2 64:10 66:8 75:12 76:8,21 77:3 82:24 96:14 119:1 171:2 179:7 239:18
artificially 195:15	ashcraft 2:4 5:3 5:7 19:24 20:4 21:8,13	assert 124:17	association 7:4 63:10,21 69:23 70:8,13,16,17 71:5,6 170:20 174:16 194:15 194:20 195:5 196:20 203:6 203:17 222:10 237:25
asbestiform 125:10,25 130:10,14 165:25 167:11	ashcraftlaw.c... 2:10	asserted 32:19 147:3	associations 189:2 195:3
asbestos 45:10 45:15,22 46:1 46:10,12,17,23 47:6,9,15,19,23 48:3 59:20 77:8 77:13 92:11 102:6,6,7 113:19,20 114:11 124:8,9 124:19,21,25 125:2,3,20 129:14,19,22 129:23 130:7 132:16,17,22 133:4,6,11,14 133:16,23 134:9,10,20,22 135:8,13,21 136:7 138:3 139:23,25 140:16 141:7,7 141:18,21	aside 128:25 asked 9:13 14:9 15:13 18:15 48:5 52:11 53:3 55:17 60:10 71:11 76:2 106:20 119:25 193:5 194:23 197:1 214:20 233:17,22 asking 11:17 18:11 57:2 71:16 107:16 133:18 134:3 144:5 156:10 166:18 197:7 207:7	assessment 32:10 115:11 147:23 170:11 asset 66:23,25 assign 243:5 assigned 41:4 70:25 assignment 41:21 assimilated 139:12	assume 56:24 147:22 178:3 181:2 assuming 34:1 148:2

[assumption - basically]

Page 7

assumption 57:2,5 161:15 179:1 assumptions 47:25 48:6 attached 97:24 243:16 attending 166:24 attention 17:7 attorney 242:16 attributable 169:2 attribute 62:20 attributes 63:9 218:5 attributing 43:25 audience 164:25 audio 232:20 august 5:4 19:25 20:4 28:1 28:2 29:6 authored 205:12 authorities 204:21 authorization 6:9 163:20 available 22:3 24:3 75:6 78:9 171:20 223:25 228:13,14	ave 3:5 average 70:19 234:21 aversion 220:25 avoid 109:25 210:17 avoidance 221:6 aware 46:14 47:20 56:16 80:14 96:13 156:4 167:8,24 171:20 172:22 172:24 215:18 218:17 awareness 39:12	94:18 97:7,17 98:4,5 101:11 109:17 110:7 110:25 132:16 135:6 136:1 156:24 174:22 175:20 176:15 179:13 180:19 180:20,22 182:10 184:5 216:2,3,5,8 226:1 241:1 back 24:18 26:2 29:6 30:4 45:13 65:10 66:18 70:20 92:15 93:24 103:8 116:11 117:10 120:7 121:3 126:10,20 127:1,5,23,23 137:23 141:13 142:19 143:24 158:2 159:18 163:9 177:1 182:9 184:20 217:23 223:12 225:12 229:17 230:11 232:4 232:11,11 235:5 background 45:25 177:19 backgrounds 147:12	backing 73:6 bad 58:17,19 154:15 161:21 161:25 162:2 186:24 balance 229:7 balderrama 3:11 ban 58:11 135:21 136:24 139:3 140:6 banned 57:17 137:10 138:14 139:2 banning 58:10 94:16 140:24 bare 43:18 barrage 226:8 226:16 227:17 228:8 base 72:15 186:11 based 33:8 34:1 43:24 129:17 129:21 170:4 189:15 197:17 203:8,18 218:7 226:1 239:10 240:11 basic 33:1 103:21 104:16 basically 14:18 24:22 25:22 29:9 30:16 38:13 40:6 78:15 82:4
	b b 41:2 51:7,16 112:23 134:25 135:2 139:16 139:22 140:13 140:14 141:19 143:25 babies 103:2 109:18 176:12 179:19 180:2 182:2,4 183:22 baby 5:16 16:11,12 56:13 56:13 58:25 59:6 63:23 66:24 74:24 85:11 89:24		

[basically - body]

Page 8

84:17 85:2 87:15 183:3 184:2 189:20 198:5 211:11 211:19 220:10 225:1 basis 104:4 166:6,9 168:25 171:24 226:12 bates 6:7,15 97:3 123:13 130:21 145:25 146:5 186:11 187:12,23 192:12 baths 147:14 bear 152:5 bearing 61:11 beasley 2:20 beasleyallen.... 2:24 bedrock 74:5 began 96:17 153:23 beginning 19:2 25:23 141:14 142:11 begins 188:9 behalf 58:2 behavior 118:3 119:6 217:22 218:11 221:16 behaviors 217:7,16 220:2 222:1 230:17	behaviour 31:24 34:23 37:16 38:5,7,10 38:12 41:12 42:6 behavioural 40:13 41:14 behaviours 53:21,23,24,25 54:1 belief 216:8 beliefs 39:7,16 44:5 196:22 215:15 217:7 217:16 220:1 222:1,16,24 223:6,19 230:16 231:21 believe 10:5 22:4 29:2 36:8 46:11 55:3 57:11 60:13 64:24 65:11 80:14 84:4 88:4 91:6 92:3,5 97:198:16 107:22 109:1 116:4 122:13 124:14 130:7 130:22 132:17 142:5,13,21 145:8 149:8 160:9 164:12 194:1,3 199:12 208:8 210:6 220:14 231:13	231:25 235:15 238:3 believed 216:1 216:3,4,6 believes 175:9 186:6 234:21 bell 124:12 bells 167:15 benchmarks 29:17 benefits 50:6 85:23 87:17 119:10 182:22 215:20 218:23 bespoke 221:8 best 8:12 9:24 32:12,14 93:3 119:4,7,8,15 151:20 162:11 162:12 180:22 242:10 bet 151:20 201:18,18 better 11:25 17:17 23:11 34:6 40:1 81:2 83:11 88:13,14 88:15 100:7 115:10,17,21 177:5 beyond 77:20 77:21 79:23 90:8 bias 81:7 195:5 195:6 239:4 240:2	biased 191:1 234:6 biasing 171:5 big 39:5 83:23 bigger 124:2 bill 29:15 billed 25:8,16 binder 10:21 11:21 binders 10:21 bit 18:7 27:21 29:23 38:21 46:2 70:2 73:11 95:15 97:15 105:24 109:21 124:2 128:8 139:5 140:12 162:10 164:20 170:8 184:18 187:18 190:7 208:24 209:8 210:12 233:8 235:4 238:21 black 88:2,4 105:6 blank 11:3 229:21 blind 39:10 44:4 217:25 boardroom 93:7 bodies 116:5,6 214:25 body 28:7 36:2 50:11 112:24 115:17,21
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[body - capability]

Page 9

139:13 boils 102:12 bond 63:22 215:23 bottle 109:23 110:20 bottom 97:3 boutique 221:8 boy 135:1 brand 39:12,12 58:24 62:25 63:4,21 65:12 65:13 67:10 89:24,25 94:17 180:22 216:4,5 218:21,21 220:25 221:1,1 221:2,4,6 224:15,21 225:4,9,13 228:20 233:18 234:22 237:10 brand's 184:3 brandi 3:12 break 9:10,15 11:7,10 25:21 50:16,16 69:11 79:24 106:21 106:24 122:5 126:24 128:1,5 159:20 163:11 184:23,24,25 233:9,12,15 234:24 breaks 220:13	breakup 14:22 breathing 110:1 brief 37:17 92:4 bring 24:18 222:23 broad 2:15 22:22 37:22 105:21 168:14 broader 41:3 53:12,15 broadly 16:14 79:17 80:15 broke 8:16 10:5 13:22 16:5 broken 236:22 237:13 brought 68:25 bucket 108:13 buckets 25:22 39:25 building 45:22 built 61:20 63:20,22,23 bulk 29:21 55:13 bullet 94:8 146:19 149:10 bunch 15:16 81:11 128:22 226:21 227:7 buried 70:17 burying 71:18 71:19 196:9 197:10,21	business 111:8 119:12 138:11 buy 118:12 buying 82:11 218:6,20 236:15 237:3 c c 2:1 139:9 140:19 calculus 89:21 call 13:14,17 60:14 157:6 180:19 called 8:4 21:5 36:2 38:8 51:13 92:5 campaign 6:20 211:2,23 212:20 campus 3:22 canada 15:20 115:22 116:2 155:11,12,23 226:2 233:25 242:2 canadian 116:1 cancer 6:18,18 7:6 32:17 53:5 53:12,14,15,19 55:14,14,20,22 55:22 57:1,6 69:21,24 70:9 71:7 75:20,21 82:23 89:7 93:14 95:11	97:19 102:6,7 106:16 112:22 113:16,20,22 113:22 114:7 114:11,15 116:8 147:4 149:22 153:15 153:19,19 170:14,23 171:2 173:7,10 174:18 175:10 178:8,8,14,16 178:21 179:2,7 179:8,12 181:9 183:22,23 184:14 186:7 188:15,16 190:19,25 194:15 195:11 195:16 198:23 200:6,8 201:1,2 201:3,4,10,11 201:17 202:8 203:7,15,17 208:3 211:15 213:14 214:11 223:16 229:12 238:2 239:8,19 241:1 cancers 201:14 202:16 candid 161:8 cap 106:13,22 181:1 capability 106:4
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[care - chudkowski]

Page 10

care 3:19	cases 203:1	century 228:19	169:22 196:22
career 73:2,4	214:5 218:24	certain 19:11	204:4 226:14
careful 209:18	218:24	46:12 48:11	243:7,11
carefully 49:3,5	cast 45:12	169:23 181:11	changed 47:14
166:24 243:3	catch 15:8	185:8 192:16	71:3 106:14
caregiver 225:8	121:25 138:20	195:1 235:24	234:9
carl 3:12	catching 24:22	certainly 9:9	changes 39:7
carried 61:25	121:23	11:20 107:12	49:22 67:7
62:5	categories	119:7 151:18	105:18 106:5
carries 218:14	15:17 16:25	163:6 185:23	120:18 226:6
carry 80:23	31:19 193:5	237:7 238:16	243:4,8,15
carrying	categorization	certainty 65:3	changing 88:14
149:10	134:17 178:24	86:14 95:7	136:13 138:14
case 8:23 14:9	categorize	181:6 221:20	230:8 231:19
14:14 18:1 22:7	137:4,7,8	certificate 5:19	characterizati...
22:8 23:5,16	causality 189:6	127:14 165:2	92:21
24:24 25:23	causation	242:1	charged 30:25
27:14 30:9 48:1	204:16	certified 165:8	charles 2:16
55:25 57:8 64:1	cause 41:16	certify 242:6	chat 11:10
67:15,21 70:12	53:5 57:1,6	cetera 15:3	122:23 127:19
71:25 74:17	89:7 110:1	83:8,8 121:14	158:13 159:4
83:24 118:17	119:20 149:22	154:5,5 172:8	186:22,25
129:18 156:20	175:10 183:22	207:17 227:6,6	201:25 202:4
161:5 167:2	188:15	cfta 189:8	check 72:19
179:9 193:23	caused 112:22	challenge 85:4	109:2 232:10
194:18,20	227:8	chance 9:15	chemicals
195:21 199:17	causes 188:15	128:19 186:12	212:19
199:19 203:19	200:7	chances 134:19	cherry 3:23
207:15 208:12	causing 179:12	change 35:24	child 215:24
211:8 213:15	183:23	36:18,24 39:12	child's 109:25
214:21 215:12	central 64:2	39:13 50:14	children 98:3
216:17 219:12	89:25 94:25	72:3,4 83:11	choice 66:15
221:19 233:2	95:1 111:8	86:9 87:7,8	choking 103:2
236:3 239:2,4	215:12 216:2,5	88:9,12,19	chris 2:6
240:3 244:3	218:20,21	118:16 120:12	chudkowski
	225:13	139:1 141:20	6:14 187:11,24

[ci - communications]

Page 11

ci 239:22 circling 229:17 cite 10:22 65:24 80:24 83:24 92:12 115:21 116:4 124:23 137:16 142:17 146:9 172:13 174:2 186:10 cited 11:19 63:4 96:22 133:24 149:6 citing 11:3 113:8 168:12 186:10 citizen 121:17 121:19 122:8 122:11 164:11 172:23 173:6 174:13 citizens 128:20 172:16,18 174:1 city 146:25 149:18 245:19 claim 133:9 134:21 198:3,3 claims 229:12 clarification 18:8 clarify 25:15 88:3 153:7 156:15 206:1 class 37:18 38:6 38:9,23 42:11 120:6	classes 37:7,14 38:1,3 39:21 classifiable 136:3 classifications 168:19 classified 136:7 clean 59:21 132:14,18,22 133:6 141:16 142:19,22 143:17 clear 9:23 41:24 68:22 89:18 178:23 199:14 232:24 clearly 86:19 98:21 230:18 clinical 40:11 close 110:2 closely 22:4 48:18 coach 156:22 coaching 156:22 coalition 173:8 cognitive 32:22 40:5,18 cohort 68:19 69:15 70:10 194:17 197:24 199:17 coke 39:9,16 67:9 218:1 219:15	collaborations 43:2 collected 43:1,9 220:18 225:12 225:17 collecting 209:19 225:3 column 243:6 come 66:18 93:2 103:12 116:10 126:10 127:5 158:2 196:16 211:15 222:16 comes 59:2 81:10 104:14 104:17 156:16 comfortable 12:4,13 79:22 164:6,7 174:21 coming 117:9 120:7 148:22 174:15 186:15 225:14 commencing 8:1 comment 17:18 20:18,21,23,23 21:1 43:14 115:16 148:9 156:4 189:19 199:4 commerce 2:22 commercial 125:1	commission 245:23 committee 2:3 170:11 common 40:25 44:3 154:22 communicate 42:13,21 52:19 58:22 86:8 117:16,21 119:2 154:25 156:19 207:3 214:22 215:19 234:15 communicated 54:13,14,20 55:5,8 59:8 81:19 96:6 114:24 117:6 152:20 171:21 186:2 224:4 234:6,14 communicates 83:12 227:9 communicating 116:12 121:8 223:23 communication 43:3 68:4 79:20 84:7 86:23 87:2 88:8 116:21 207:8 234:9,19 communicati... 74:10 75:3 76:4 76:12 81:25 135:7 220:8
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[companies - concurrently]

Page 12

companies 42:13,21 43:16 43:24 154:23 206:6 207:2 218:4 221:11 company 28:3 43:12,17,19,23 44:1,4 52:15 56:15 58:2 60:15 61:5 62:19 63:5,14 71:10,12,15 72:5,7 74:11 79:18 81:23 84:5 85:20 86:25 94:12 99:13 102:4,16 103:1 114:20 117:13 119:2 120:19 121:11 138:22,24 139:17 176:9 190:13,17 193:22 196:23 205:22 215:13 216:12,25 220:14,16 222:14 223:23 236:16 company's 38:18 215:17 217:3,15 219:21 221:22 223:3 230:13 company's 190:16 191:4	215:25 comparing 228:18 compensate 236:6 competent 243:19 competing 65:5 65:6 competitive 84:18 87:21 90:3 competitors 61:24 62:21 85:3 complaints 214:1,2 complete 90:25 completed 160:3,4 completely 50:22 56:20 155:4 187:20 205:8 220:15 completeness 170:17 completes 157:4 complexity 215:1 complicated 35:10 99:18 196:12 222:12 complied 49:18 computer 158:15 159:2	186:16 209:7 242:10 concentrated 135:8 149:19 concept 59:1 61:21 240:2 concern 54:5,6 54:8,19 60:1,4 61:3,10 83:21 98:22,23 99:5 99:23 105:2 110:24 111:1 112:3 113:19 114:1 115:24 concerned 102:4,16,24,24 102:25 105:9 105:10 125:14 167:21 217:2 concerning 183:1 concerns 53:22 54:13 56:16,17 59:4,7 76:16,20 78:7 82:4,12 83:13,18 91:24 92:9,11,17 94:10 95:5,22 95:23 96:3,16 102:5 106:7 110:6 114:14 114:22 137:25 148:17 153:10 153:15 176:10 176:16 177:4,7 177:25 178:1,4	215:16 216:18 216:20,22 217:13,14 227:4 236:5,10 236:16,23 237:4 238:23 239:1 conclude 85:20 89:15 105:17 169:1 236:25 concluded 65:17,22 155:2 188:14 241:17 concludes 62:12 169:4 241:19 concluding 83:17 90:11 conclusion 55:25 60:14 62:8 73:6,16,22 73:23 132:13 152:17 162:10 162:12 169:10 204:4 conclusions 150:22 153:1 168:14 217:19 219:18 conclusive 71:16 concrete 93:8 93:11 concurrently 82:17
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[conditional - consumers]

Page 13

conditional 205:3	confusion 18:21 52:17	considering 65:9,10 92:21	156:18 187:12
conduct 52:17	149:24 150:14	92:22 126:23	187:25 211:12
55:25 56:2	198:12 226:25	140:18 214:15	213:6 217:22
66:13 68:1	conjunction	consistent	218:11 221:16
81:19 90:14	189:9	23:20 102:10	223:18 224:19
175:13 191:23	connect 99:11	240:14,19	226:6,14
222:20	connected	constant 226:8	228:12 234:21
conducted	30:21 102:8	226:16 227:17	236:21 237:6
62:24 67:19	connecting	228:8	consumerists
68:7 120:15	94:24 100:10	constituted	146:20
125:22 164:17	105:1	138:13 139:2	consumers
165:22 196:7	connection 8:9	140:8	39:15 42:13
207:23 219:18	9:3 14:9 15:25	consult 78:24	52:18,20 53:25
conferred 34:3	22:20 33:21	94:12	54:14,20 61:14
34:7	34:3,8 48:6	consultant	61:14 62:1,2,6
confidence	77:2 101:4	147:6 185:13	62:6,12,20 63:1
239:20	105:7 208:12	189:16	63:15 64:9 65:8
confident	208:17 211:7	consulted	65:17,22 66:1,9
132:19 142:22	240:3	191:20	68:6 71:20
143:8	connects 81:6	consulting	72:17 74:13
confidential	98:22	27:17,24 28:15	75:4 78:19
27:17,24 28:19	consequently	28:19 29:15	81:19 82:10
confirm 82:9	166:1 168:22	47:1 78:8	83:7 85:14
197:14	consider 30:8	consumable	90:19 91:4,9,20
conflict 65:16	79:5 144:21	84:24	94:23 95:13
conflicted	172:10	consumer 6:14	101:17 103:9
116:13	considerable	16:16 29:13	112:7 114:4,25
conflicting	149:23 150:14	31:24 38:5,10	116:11,12,14
234:10	237:9	38:12,15,16,20	116:21 117:7
confused 22:24	consideration	39:1,12,17	117:22 118:4
112:7 140:12	58:17	40:21 42:6	118:16 148:4
222:25	considered	43:20 62:18	155:7 167:19
confusing	91:20 93:14	66:15 81:10	171:22 173:5
120:20 197:11	158:23 160:12	84:23 85:11	174:7,25
	166:2	118:3,3 119:2,6	177:22 190:3
			191:5 196:16

[consumers - corporate]

Page 14

196:21 198:12 199:8 204:21 204:25 205:14 205:23 207:13 214:17 215:14 215:18 216:1 216:17 217:7 217:12,14,16 218:5 219:2 220:1,13 221:10 222:1 222:24 223:6 224:1,4,14 227:10,14,18 228:7 229:6,13 229:23 230:8 230:16 233:6 234:6,14,16 235:7,15,16 237:3 consumers' 215:21 consumption 221:6 contact 185:19 contain 124:20 125:15 135:25 167:10,18 168:1 contained 47:23 167:20 245:10 contains 125:9 136:2 181:3 contaminants 125:4	contaminated 48:3 contamination 125:18 contend 149:20 content 150:4 contents 5:12 10:24 51:14,17 51:18,23 192:13 context 63:14 76:15 95:22 99:2 152:7,19 153:4 164:21 170:5 172:2 contingency 6:6 145:25 146:4 continually 100:23 102:8 continue 83:20 89:2 95:9 128:1 136:14 180:18 217:6 219:25 223:5,7 230:15 230:18 234:15 234:18 continued 22:6 82:22 86:6 221:25 continues 215:14 231:25 continuing 26:1 172:10 contracted 16:17	contradicted 171:7 contradiction 191:2 control 193:23 194:18,20 195:21 199:17 199:20 239:2,6 240:4 controlled 70:12 controversial 221:15 controversies 77:9,25 controversy 77:13 129:14 129:19,22 130:1 132:17 142:3,8,16 conversation 11:5 14:1 65:19 conversations 16:24 111:7 114:10 217:24 convert 35:14 convey 197:23 convoluted 197:19 cooperation 151:7 copy 10:23,23 11:8 12:1,19 69:10 127:4 158:14 165:8 202:2,6,7 215:7	237:20 238:7 core 215:22 216:7 corn 154:2 corner 34:19 cornerstone 98:5 100:5 101:11 111:9 111:22 cornstarch 15:3 16:12 57:19,22 76:18 76:19 81:16,17 81:25 82:1,12 82:15 84:23 85:6,15 87:13 88:5 89:17 90:5 91:8,10,15,20 92:15 93:20 94:1,9,13,19 95:24 96:18 98:24 99:1 111:5,13 114:12,13 117:11,11,12 139:9 140:19 148:19 151:20 151:22 152:9 153:3,23 172:6 176:21,24 181:18,25 182:22,24 183:14 184:8 184:12 227:5 corporate 43:3 43:8,12 75:4
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[corporate - ctfa]

Page 15

88:24 154:15 correct 13:24 14:6 16:23 18:18 20:19 21:11,15,18,19 24:21 35:1,2,22 36:11,12,16,17 36:23 53:6,7 56:9 57:5 58:13 59:13 60:5 66:9 66:10 67:18,21 67:23 73:19,24 73:25 74:2 75:10,24,25 77:6 86:14 90:14,15,15 91:16,17 93:20 93:21 94:1,2,7 96:23 97:20 105:19 111:1 112:17,18 113:1,11 115:22 117:7 122:9 134:2 140:3,9 143:21 143:23 144:4 146:10 147:24 148:2 150:15 161:1 165:14 168:3,10,11,11 171:16 172:20 172:23 175:11 176:2 177:19 178:16,18 179:3 183:11 197:4 198:24	207:20,24 208:19 216:13 217:17 219:18 219:19 227:19 232:19 237:23 245:10 corrections 245:7 correctly 22:11 43:23 52:24 55:18 76:25 78:11 93:18 96:20 126:3 132:24 150:8,9 166:4,5 168:7 169:7,8 171:12 171:13 191:7 195:17,18 217:8 226:10 correspond 193:4 cosmetic 94:16 124:7,20 125:8 125:15 135:19 136:23 165:12 167:9,25 168:4 169:2,6,24 188:14 190:19 cosmetics 6:20 211:3,23 212:21 council 3:19 147:9 148:13 counsel 10:12 15:23,25 16:22 19:18 26:7,18	32:4 34:3,8,12 48:5 74:23 76:2 76:6 77:11 107:22 127:12 138:19 163:15 192:23 228:5 232:16 242:13 242:17 count 101:24 173:21 counter 103:15 198:11 couple 8:22 9:2 12:23 19:16 21:25 60:3 70:21 121:16 122:18 123:10 129:11 130:15 131:25 159:9 182:7 189:13 221:7 238:17 coupled 85:9 course 13:9 37:16 68:24 109:7 166:19 166:24 167:4 233:16 court 1:1 9:6 50:22 121:2 128:2 232:3 243:22 cover 38:11 coverage 214:10 cramer 112:16 113:12,21	114:5 170:24 171:10,17,20 create 184:6 created 18:20 52:17 183:8 creates 226:24 creating 198:12 creative 177:14 177:18 credence 58:3 142:12 credibility 61:6 credible 56:11 58:4 60:14,16 60:21,23 61:10 83:2 93:14 95:10,18 117:9 142:9,13 236:4 236:4 credo 99:13,13 crises 43:3 218:24,25 220:8 crisis 43:8,12 220:12 critical 220:11 criticism 101:14 criticisms 86:3 criticized 147:10,25 critiquing 188:25 189:7 csc 211:3 ctfa 189:8
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[culminates - department]

Page 16

culminates 153:25 curious 23:10 72:19 80:17 87:6 197:15 current 30:3 34:20,22 68:3 115:25 132:16 135:23 138:8 138:12 140:6 193:15 224:24 235:15 currently 37:6 37:10 138:13 139:1 140:8 153:12 222:6 222:10 223:2 223:24 224:14 224:19 custody 165:5 customers 93:25 119:17 119:18 179:11 207:3 217:2 cut 17:20 cv 5:9 10:24 34:12,14,18,20 36:18 cvr 1:25 242:4 242:24	dangerous 58:12 daniel 112:16 darn 148:18 data 41:13 43:1 43:9,25 65:23 66:12,19,19 73:23 95:12 103:22 126:19 161:20 207:2 220:4,18 224:23,24 225:3,12,17 229:10 date 20:8 34:18 124:1 158:18 158:23 243:12 244:7 dated 19:23 24:10 132:6 186:11 241:2 day 1:13 26:19 26:22,24 30:18 39:22,22 54:21 71:18 108:24 158:4,7 190:13 205:19 222:11 230:2,19 231:5 233:2,6 234:18 245:16 days 27:3 243:22 dc 2:9 deaths 203:1 debate 47:18 190:5 240:3	debating 83:6 decade 92:23 117:14,19 227:2 decades 101:4 218:9,14,14 226:18 deceived 114:4 december 5:8 21:10,14 24:20 24:25 25:9 165:9 deceptive 52:16 55:24 56:2 90:13 114:20 119:18 148:5 175:13 decide 206:10 decided 89:5 95:8 decipher 197:17 decision 81:10 82:14 86:5,23 87:14,16,25 90:7,9 91:4 172:22 174:12 220:17 decisions 78:1 197:17 deck 63:7 declare 245:4 decline 236:11 declining 226:5 decode 196:14	defendant 3:1 defensible 87:22 defensive 43:13 deficiencies 171:18 definitely 13:3 130:18 193:18 233:10 238:14 definition 47:5 47:8,19 140:23 definitive 190:3 degree 86:14 95:7 141:4 181:5,5 221:20 deletions 245:7 deliberate 58:19 deliberately 114:21 demand 226:5 demographics 235:14,25 denials 217:4 217:15 219:23 221:23 223:4 230:14 denied 174:3 189:2 dense 188:4 denying 172:22 189:22 department 40:4,14 165:3 170:9
d			
d 4:1 5:19 123:17,18,19 127:14			

[departments - disclose]

Page 17

departments 87:1 88:9	detection 130:6 136:14,15,16	diagnosed 213:13	difficult 70:18 71:21 181:19
dependent 41:8	138:2 139:22	diana 3:11	198:8
deposed 8:18 27:10	139:23 140:1 140:15,15	difference 67:13 72:9 83:8	direct 65:16 88:25 129:13
deposition 1:10 10:14 22:2 23:4	141:12,21 167:16	120:9 121:8 158:3 206:17	184:6 191:2
24:1,9 26:4,8	determination	different 12:25	directed 75:3 187:24
26:14 31:5,7	203:14	15:17 25:22	directing 105:8
49:12 107:19	determine 61:9	26:22 31:19	direction 14:14
107:24 108:1,6	180:21	38:25 40:1,19	52:6 171:9,11
108:9,25 112:9	determined	41:4 43:11,15	242:12
155:14 241:18	221:11	54:9 56:18 58:6	directly 41:23
242:5,7,15	determining	59:2 60:3 67:12	41:25 42:17,17
243:3,4,13,17	39:17 50:7	71:2 79:14,14	54:14 69:6
243:23 244:7	125:20 165:20	85:7 87:3 88:22	100:10 185:16
depositions	dettre 97:24	99:12 100:23	186:2 204:24
8:22 108:22	develop 57:18	102:2 116:22	212:13 220:18
describe 29:5	83:4,9 90:17	118:5 131:25	225:10 229:22
47:11,13	92:18 103:23	134:16 136:10	230:7
describing	117:15 118:21	137:5,8,13	director 149:12
240:12	184:4 227:4	144:12 168:19	177:15,18
description 5:2	developed	178:13 189:13	183:3
6:2 7:2	88:11 89:18	194:24 196:17	directs 88:8
designation	94:10 125:21	198:10 199:11	dis 163:7
35:15 84:25	165:21 176:21	201:13 202:16	disagree 89:14
desirous 245:8	177:10 218:13	204:9,11 205:7	92:20 166:7
desk 10:20	developing	206:15,18	226:13
detail 49:6	76:17,19 82:1	218:9 219:6,7	disambiguate
details 129:25	96:17	226:20,25	196:15
detect 133:3	development	227:10 235:14	disambiguating
134:19 144:18	91:15 95:24	236:7	71:13 120:16
144:19	98:24	differently	disappear
detected 65:14	device 132:15	205:2 229:19	44:14
130:10	devoid 216:21	differs 41:5	disclose 56:7

[disclosed - documents]

Page 18

disclosed 27:14 56:17 91:19	disease 194:23 195:7,10,14	146:8 181:4 188:2 193:17	164:10,24 167:5 168:12
disconnect 56:22 74:11,19 167:21	diseases 98:2 dispute 88:21	199:15 200:5 201:7 202:7 208:7	168:13 170:3,8 172:1 186:5,9 187:7 188:13
discontinuation 225:25	distinction 73:12	doctors 110:11	189:15 200:9 200:10 201:16
discontinued 233:24	distinctions 141:8	document 6:8	201:20 202:2,4 203:21,22,23 210:21
discontinuing 226:4	distinguish 39:10	12:10,11 20:1 20:14 26:1 31:4 51:23 76:22	documents 11:18,24 15:23 16:13,22 17:1,3 17:4,8 19:17 21:20 22:5,9 26:3,4 32:4 51:22 54:11 56:15 57:13,15 57:21 59:17,19 60:13 65:18 74:22 75:4,11 75:23 76:7,13 76:14,18 77:1 77:11 81:24 82:2 83:17,25 84:2,20 85:13 86:8,19 87:4,21 89:16,23 90:1,6 95:23 98:25 100:21 101:3 101:22,25 104:20,25 105:13 113:23 113:24 121:16 122:7 129:18 130:4,6,11
discuss 76:15 90:1 98:25 117:17 190:21 198:18 199:19	distorting 71:20	77:9 84:7,10 86:5 97:11,16 99:3 101:8,16 101:20,23 104:22,23 106:17 111:19 111:24 115:22 122:14 123:15 123:18 124:15 126:7,11,14 130:7,13 131:3 131:20,25 133:25 138:4 141:14,23 142:17 145:4 145:22 146:8 146:17,18 149:6 150:11 151:14,15 153:10,24 156:21 157:13 158:10 160:8 160:15 161:4 162:14 163:16 163:18,20	
discussed 31:17 76:13 151:14 195:21 219:15 224:2	distributed 88:18		
discusses 205:22 207:2	distribution 16:15 29:12		
discussing 74:12 75:4 99:1 193:23 221:18	distributors 83:10		
discussion 59:4 84:16 85:13 87:7 148:19 162:3 170:13 170:17 190:8 197:24 238:19	district 1:1,2 disturbed 179:16		
discussions 58:5 61:1 77:23 85:9 114:12 116:20 117:1,3 117:5 174:17 185:25	disturbing 176:13 179:15 divide 40:4 division 135:18 135:19 136:23 136:24 138:7 144:2 doc 126:11 145:8 doctor 19:20,25 32:23 34:13 50:17 51:6 64:15 97:11 98:8 105:23 120:2 126:6		

[documents - eighties]

Page 19

148:21 152:2,6 153:24 154:1 157:16 160:12 161:11 166:13 172:3 177:1 190:1 191:15 191:16,17,18 191:19,21 192:2,6,11,21 192:22,25 193:5,8 215:25 218:22 226:19 doing 17:25 39:21 42:4 46:22 64:1 72:15 74:1,5 84:15 87:3 91:6 101:1 107:13 121:13 159:6 172:6 197:12 197:13 218:4 223:11 domains 206:18 donate 41:15 double 109:2 doubt 117:23 118:13 douillet 124:1 dovetails 40:9 downloaded 191:16,22 dozen 101:25 dozens 190:21 198:18 205:12	dr 5:3,6,9,11,15 6:12 7:3 8:7 10:14 11:16 13:11 17:15,19 19:24 20:3 21:7 21:13,25 22:16 22:19 23:4,15 23:25 24:9 34:14 48:12,20 48:24,24 49:1,6 49:9,12 51:8 69:25 80:7,10 80:20 91:1 97:6 106:3 120:22 122:6 124:13 128:18 147:6,7 149:3,12,18 150:13,23,23 151:10 178:17 185:5,9 186:5 188:14 209:14 237:24 241:6 draft 20:17,20 drafting 19:14 20:23 23:22 dramatically 118:16 drawing 44:5 59:22 103:7 104:13 drifting 141:4 driving 51:2 drop 118:11 dropbox 12:20 12:23 17:2,4 158:1,15 159:3	186:20,21 193:3,4 209:12 drs 97:25 drug 5:18 127:13 151:8 212:16 213:20 drugwatch.com 6:23 212:24 213:3 due 182:2 195:5 226:5 duly 8:2 242:8 dusting 129:12 170:22 dynamics 37:24 e e 2:1,1 4:1 78:4 78:14 187:18 earlier 16:5 17:18 77:8 106:20 120:15 148:20 153:6 168:8 179:24 184:18 191:20 196:7 197:1 205:19 208:8 231:6 239:14 239:16 early 96:12 125:13 129:20 142:3,8 165:17 166:13 167:10 168:1 177:2 179:5 225:2	earnest 20:10 easier 121:6 210:12 232:13 easily 12:9 easy 180:10 eater 128:7 ebay 32:2 economic 81:7 98:22 99:2,6,15 100:14 101:1 105:2,11 152:3 economist 81:12 educate 46:8 211:20 edward 78:5 effect 50:12 56:18 67:6 72:13 198:5,5,5 220:16 231:23 231:24 232:1 effective 82:8 82:20 89:8 93:19 95:12 effects 28:22 76:8 162:7 216:16 effort 57:18 efforts 151:18 egg 59:1 63:22 85:10 94:5 101:9 111:9 eight 27:1,4 145:10,11 eighties 87:11 89:5 92:18 95:8
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[eighties - evidence]

Page 20

100:22 177:2 225:1 either 25:6 85:5 85:25 103:22 126:9 158:2 184:6 189:2 elevate 85:6 elevated 190:18 eliminate 135:23 138:8 email 2:10,17 2:24 3:7,24 179:17 208:9 208:22,22 210:15,18,21 emails 174:19 175:22 176:5 181:7 183:20 embarrassing 162:1 emotional 63:9 63:10 emotions 215:22 emphasis 105:5 empirical 40:20 67:20,25 206:5 207:2 219:16 employ 72:23 employed 242:13,17 employee 38:8 242:16 employees 75:5 encompass 53:16	encounter 130:4 encountered 84:10 182:20 216:18 217:12 237:12 240:2 endeavor 213:21 ended 24:19 30:3 91:22 ends 37:12 engage 119:9 engaged 17:25 43:13 52:16 55:24 56:1 90:13 175:12 engaging 95:25 england 146:23 147:9 148:13 english 141:10 enormous 62:1 62:6 118:11 218:15 enter 119:12 entire 100:16 126:11 135:6 entirety 199:9 entries 20:17 34:2 entry 19:25 20:16 21:9 24:19 environmental 42:23 149:13 149:15	epi 15:21 epidemiologi... 31:22 69:19 113:4 115:9 170:19 237:22 epidemiologist 32:22 78:21 epidemiology 239:9 equal 199:5 equivalence 111:3 equivalent 199:16,18 errata 244:1 erratum 243:6 243:10,11,16 243:21 erroneous 150:2,23 error 209:18 escape 136:15 escaped 136:14 especially 9:2 91:4 100:21 148:9 esq 2:5,14 3:4 3:21 essentially 35:12 38:8 39:23 70:15 84:19,20 137:4 161:18 214:21 218:4 establish 58:12	established 29:18 39:25 149:23 220:19 establishing 150:14 estimate 24:23 25:19 29:17 et 15:3 83:8,8 121:14 154:4,5 170:24 172:8 207:17 227:6,6 239:12 evaluate 77:22 151:2 167:1,16 206:12 219:3 229:4 evaluated 216:20,23 217:14 evaluating 77:22 166:19 168:17 172:7 229:21 event 148:9,15 events 114:2 eventually 227:8 everybody 121:6 202:24 evidence 61:15 61:16 65:6 70:16 74:14,16 79:5 82:25 88:7 96:4 99:21 116:13 118:19 118:19 120:17
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[evidence - exemplary]

Page 21

148:7 155:25	93:9 97:10	177:23 178:19	exactly 24:3
162:11 169:3	102:14,21	180:14 182:13	25:1,3 29:21
174:25 175:1	104:12 105:14	183:15 185:4	47:2 70:21,25
180:5,7 182:17	106:1 107:4	186:17,21,25	72:11,14 74:7
182:20 189:3	108:12,15,18	187:6,14	90:8 106:12
190:23 191:6	108:23 109:4,7	188:11,22	144:15 184:13
196:18 198:11	109:8 112:8,14	196:2,24	189:25 193:20
198:20 199:1	113:9 115:7,19	198:13 199:13	205:18 231:18
203:5,16 204:7	116:23 120:3	199:22 200:4	examination
204:9,11,13	120:20 122:2,4	200:15,20,25	4:3 8:6 241:19
217:18 219:4	122:22 123:1,7	201:6,23,25	examined 8:5
219:17 228:13	123:16,20,22	202:3,9,14,20	147:6,11
234:11,11,11	126:16,22	202:22 204:17	examiners
236:4 239:9	127:1,7,10,17	205:15 206:21	12:25
evidenced	127:21 128:17	207:9,25 208:4	example 10:18
121:12 148:18	131:11,14,19	208:6 209:4,16	25:7 37:14
evolved 18:25	131:23 132:11	209:21 210:2	39:16,16 67:9
19:5	134:23 137:6	210:10,14,23	72:20 77:7
evolving 22:7	137:15 138:21	212:14,22	88:10 90:16
ewald 3:4 4:3	139:15 140:20	213:9 215:3	92:13 116:5
8:6,8 10:5	141:24 143:6	224:8 225:15	118:7 120:8
11:12,14 12:21	144:8 145:2,13	227:22 228:1	121:7 162:16
13:3,8,10 15:9	145:17,20	230:10,24	219:15 223:12
15:11 17:10,14	146:7 149:2	231:2,10,13	223:13
20:7 21:16 23:1	150:19 151:4	232:2,13,17,21	except 71:3
27:6,8 33:3	151:12 152:25	232:22 235:3	excerpts 11:1
34:17 45:18	154:6,12 155:9	235:11 237:14	178:15,21
48:9 50:13,21	155:18 156:8	237:19 238:6	exchanged
51:3,11 52:1	157:3,11,20,23	238:14 240:8	174:19
58:8 59:9 60:2	158:3,8,16,19	240:18 241:12	excuse 154:2
60:20 64:3,17	159:5,12,21	exact 18:24	executive 3:22
64:22 71:23	163:17,25	19:4 26:20	executives
73:14 78:3	164:8,21	62:22 75:19	129:10
79:25 80:6	166:11 170:6	84:25 196:6	exemplary
82:18 87:9 89:3	172:12 173:23	207:15	117:12
90:10,23 91:12	175:3,18		

[exercise - fair]

Page 22

exercise 211:20 219:4 exhibit 19:23 20:3 21:7,12 34:12,14 51:5,6 51:8,13,15,16 51:18 97:1,5 122:16 123:18 126:8 127:11 127:13 131:5 132:5,8 145:22 146:2 163:10 163:17,19 178:10,17 187:9,10 200:20,22 201:1,3 212:17 212:20,23 213:2 237:20 237:24 exhibits 5:1 6:1 7:1 19:17 exist 68:9 existing 44:5 216:21 exit 163:13 expand 63:24 expect 61:4 177:18,21 179:10 192:18 expectation 39:6 expectations 39:7,15 216:22 expense 83:4	experience 50:12 experiment 41:1,20 experimental 39:19,24 40:2 40:15 67:17 73:7,13,23 74:14 207:19 219:17 experimentally 74:6 experiments 39:23 207:24 expert 5:13 13:13 21:2 27:15,18 33:17 48:11,14,23 49:4 51:14,19 118:3 223:9 231:20 expertise 31:24 32:17 33:6,13 50:5 67:4,5 72:15 77:21 113:3 115:15 117:25 137:14 141:4 144:21 150:20 153:17 154:21 166:20 168:15,17 204:25 205:18 205:19 217:21 experts 21:25 22:14	expires 245:23 explain 78:13 164:23 185:10 195:13 explained 220:15 explains 221:13 explicit 84:12 explicitly 63:20 explore 103:21 138:15 expose 41:4 exposure 185:18 195:8 203:7,18 express 39:8 175:13 extent 32:15 76:25 83:5 external 77:20 externally 79:18 117:1,4 eye 42:3 f face 109:25 facing 180:9 fact 59:12 61:8 87:11 90:3 95:16 99:20 105:21 110:19 143:25 178:9 194:12 197:14 218:17,22 236:15	factor 66:3,4 220:11 221:13 factored 90:7 factors 41:18 171:6 194:24 194:25 195:9 203:1,2,11 facts 6:17,19 15:19 43:18 68:13 69:6 88:20 92:4 190:7,16 191:12 192:3 192:14 193:17 195:20,25 198:17 200:21 200:22 201:2,4 202:8 208:3,3 221:18 224:1 factual 87:13 factually 183:11 faculty 36:10 failing 52:19 failure 59:21 fair 18:10,17 31:14 44:1 47:3 57:3 62:2 75:16 85:2 115:5 116:3 120:5 126:13,16 160:14,17,20 175:1 177:17 192:9 193:21 200:2 207:4 208:13 224:5
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[fair - five]

Page 23

224:16 229:22 230:7 235:16 235:17 fairly 200:1 219:3 229:4 fallout 99:6 false 111:3 119:9 185:22 189:4,5 familiar 41:1 80:10 122:10 122:13 147:17 148:10 famous 81:6 fancy 123:3 far 24:16 128:25 199:8 216:13 fast 25:5 favor 126:6 favorable 161:11 favorably 161:9 fda 5:19 115:10 116:6 121:17 122:7,10 123:24 125:13 127:15 128:19 135:8,18 136:13,23 137:3 138:6 144:2 163:9 164:16 165:6 165:17,18 166:1,7 167:17	168:23 169:11 169:22 171:16 172:14,16 173:3,9,11,22 174:3,12 fda's 121:19 feasibility 91:8 features 42:25 federal 116:6 feedback 93:25 feel 12:4 113:2 174:20 176:25 177:5 felt 77:21 ferret 141:9 fiber 132:19,20 135:9,11,14 136:3,7,22 137:9,13 142:23,23 143:9,9 149:21 fibers 112:22 112:23 130:10 130:14 133:23 139:11 140:25 168:19 fibre 46:13,18 fibrous 135:21 136:1 144:4 field 33:12 41:19,21 93:23 93:24 fields 40:16 fifty 108:20 figure 99:9 100:7 105:17	106:4 142:2 154:4 figures 6:19 201:2,4 202:8 filed 223:14 240:21 filing 243:17,22 final 163:2 203:3 financial 103:5 103:6 financially 242:18 find 40:20 58:20 62:22 78:16,17 85:5 86:8,22,24 88:1 88:7 91:11 106:17 108:11 123:14 133:10 133:13,22,23 161:23,25 168:24 179:14 179:15 186:13 186:18 190:18 190:23 192:2,7 193:24 197:8 198:9,20 222:9 232:13 finding 162:2 174:15 findings 147:18 207:20 221:8 finds 120:17 162:6	fine 69:9,12 159:5 187:5 202:3 209:23 finish 9:4 finished 9:5 159:25 160:10 188:5 finken 3:14 firm 19:24 21:8 160:25 208:9 firms 155:13,23 213:21 214:11 first 14:13,17 15:5,12 19:25 20:14,16,25 30:9 33:15 52:9 52:23 53:9 85:11 91:14,21 94:3 102:6 103:3,4,17 104:17 108:24 113:17 120:24 122:22 128:21 131:2 136:11 146:21 147:2 147:24 151:20 159:25 161:19 164:22 165:1 173:17 177:13 188:3,5 209:1 210:24 212:8 217:1 239:11 240:1,12,20 fit 181:21 five 72:7 80:2 130:20,22
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[five - full]

Page 24

<p>139:8 fix 180:10 flamm 170:12 flip 51:6 fmri 42:4 focus 17:7 76:11 106:15 130:3 193:10 202:17 focused 29:12 68:17 106:16 151:18 231:4 focusing 55:12 231:5 folder 17:3,4 158:10,21 160:12,15 191:15,16 folders 160:18 160:19 191:19 193:3 folks 10:13 50:16 105:8 following 21:21 22:12 238:22 243:9 follows 8:5 food 5:18 127:13 136:24 138:7 144:2 151:8 footing 189:24 footnote 240:24 forecasts 82:9 84:15</p>	<p>foregoing 242:5 242:7 245:6,9 foremost 217:1 forget 37:11 127:11 187:9 forgive 130:21 form 10:18 12:2,14 19:2 32:20 45:16 48:8 57:9 58:14 63:16 73:8 77:14 81:20 101:18 113:6 115:3,12 119:24 132:17 134:12 135:21 136:22 137:1 137:11 138:17 139:4 140:10 141:2 143:3 144:4 148:14 150:16 151:1 152:21 155:15 166:8 168:1 170:1,3 171:23 174:4 175:15 177:20 182:17 188:18 199:21 199:24 204:23 212:1 213:5 223:20 224:22 229:15 235:9 243:5,8 format 242:12 formations 46:10</p>	<p>formed 23:17 135:12 former 75:5 forming 79:4 132:20 142:23 143:9 forms 135:15 formula 92:5 94:20 forth 159:18 fortunately 27:2 forward 11:16 forwarded 210:16 forwarding 97:25 found 12:24 23:20 61:17 69:20 70:10 71:12 84:11 87:3 125:1 132:21 142:24 143:10 147:3 147:12 158:20 161:20 194:7 194:16 195:2 196:17 239:9 foundational 119:13 four 27:1 108:20 157:22 157:23 190:17 193:22 194:3 fourth 94:8</p>	<p>fragments 136:2 fragrance 216:10 framed 141:14 framing 95:21 franchise 94:5 98:6 100:6 101:12 111:9 111:22 frankly 62:1 86:24 99:12 fred 176:22 frederick 107:20,23 108:1,6 free 169:20 213:15 freeze 35:12 friday 12:20 friedenfelds 80:10,20 friend 189:20 front 10:22 12:8 52:3 123:4 159:11 160:21 161:11 243:18 froze 120:21,22 fruition 139:3 frustration 86:7 fueled 226:6,14 full 37:3,4 77:12 79:9 131:20 202:4</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[fuller - going]

Page 25

fuller 121:9	203:17 238:1	given 23:6,7	232:14 233:2
fully 66:17	239:17	27:11 56:19	238:18,21
125:21 165:21	geoffrey 147:7	62:2 94:3 180:8	goes 44:14
fund 154:16	geological	197:12	65:10 124:16
fundamentally	150:1	giving 224:4	125:6 140:16
101:2	george 1:10 4:2	glanced 49:2	147:1 149:9
funded 154:14	5:12 8:3 51:14	glimmer 118:6	151:5 168:20
155:13,23	51:19 244:8,25	118:25 119:19	going 11:16,17
157:5 162:16	245:14	global 63:20	11:18 14:15
funding 156:16	gerel 2:4 5:4,7	79:16 177:14	18:4 19:16,18
further 64:7	20:4 21:13	177:18	26:2 49:16,21
106:23 109:22	germane	globally 63:25	49:25 50:13,15
170:8 238:21	151:17 230:9	234:1	50:25 51:4,12
241:11 242:15	getting 19:12	gmail.com 2:17	66:2,21 82:7,11
future 82:10,13	26:6 54:22	go 15:4 17:10	83:6,9 84:8,9
g	73:12 77:19	30:4 39:17	85:2,16,25 86:2
game 85:2	84:25 140:12	44:13 46:24	86:20 88:14
gap 86:10	144:20 228:4	53:1 64:7,23	89:2 91:22
gary 170:11	233:8	67:2 69:12	92:25 93:3
geared 91:16	gilbert 3:11	72:21 78:22	94:22,23 95:9
gender 221:6	give 9:1,14 11:7	79:25 82:8	96:25 99:5,9
general 9:1	18:24 25:7	85:24 88:16	103:12 104:3
56:9 81:3	37:17 53:3	89:9 90:23,24	105:21 109:9
162:13 166:23	62:22 69:10	92:15 96:7	109:22 111:12
218:2 235:13	76:3,6 87:5	108:6 109:21	112:12 114:14
generalized	108:14,19	123:5 127:1,23	114:15 122:15
206:13	118:7 128:11	128:5,6,7	122:24 123:10
generally 16:8	128:13 131:8	131:20 134:24	127:21,22
166:19	131:15 145:11	139:8 141:13	128:11 131:1
generations	157:18 158:17	142:18 151:20	131:19,24
216:23	159:9 163:12	151:25 153:22	133:3,10,22,22
generator	184:14 186:12	154:11 158:15	137:23 138:1
107:6	187:25 199:16	159:3,17 163:9	139:11 140:4
genital 7:5	201:21 202:5,6	170:8 172:14	140:17 141:12
170:21 203:7	238:4 241:5,9	193:6 210:20	141:21 144:25
		213:10 223:12	154:3,16

[going - health]

Page 26

158:14 159:15 159:17 161:10 162:12 176:7 184:21,23 193:14,14 195:22 200:20 202:17 210:8 210:25 217:23 223:24 225:9 225:11 235:20 238:8,10 golden 59:1 63:22 85:10 94:5 101:9 111:8 gonna 69:10 85:14 89:8 187:2 193:12 good 13:2 50:18 50:25 61:5 109:5 127:20 139:13 145:18 152:9 162:7 209:19,25 google 15:21 46:24 75:14,18 75:24 78:22 211:16 googled 211:14 gotta 189:20 governance 88:24 government 58:11 94:15 governmental 28:6	grab 108:9 145:12 graduate 44:11 44:13,18 grammar 187:16 granularity 33:10 gravity 62:1,6 96:6 great 8:14 9:8 9:16 12:16 13:8 14:12 17:22 83:4 108:23 202:9 210:19 group 40:8 70:25 71:2 85:21 146:23 146:24 147:18 group's 147:24 groups 37:21 41:5 72:10 194:21 guess 25:2,4,6 87:24 156:3,9 178:7 183:18 184:13 230:6 guidance 15:24 33:20 201:21 guidelines 136:12 guiding 119:15 guys 26:23 122:17 128:2 145:8 158:4	h h 187:18 habits 39:13 226:6,14 half 20:1 26:19 26:21,23 227:2 hand 75:13 210:8 handing 108:21 238:9 handling 189:21 hang 104:22 hanging 101:20 happen 29:19 58:18 88:23 89:20 240:13 happened 18:25 19:3 29:22 31:13 43:18 57:25 86:18,18,22 87:6 92:4 95:16 214:12 230:5 happening 31:5 79:17 129:20 174:10,24 223:8 224:10 227:1 228:18 230:3 233:20 happens 31:10 88:6,19 114:18 114:24 happy 50:15,15 127:1 128:1	161:18 184:22 184:24 hard 12:1 45:12 148:8,14 187:18 195:12 209:8 222:19 harder 170:4 harm 119:20 217:5 219:24 221:24 223:5 230:15 harmful 45:17 135:9 139:12 hate 158:25 232:14 hazard 103:24 124:23 169:1,4 hazardous 125:2 169:23 hazards 172:8 head 105:16 184:14 health 15:20 28:22 32:16 33:7 42:14,17 42:18 43:4,8 45:6 50:3,6 52:21 53:9,12 53:17 55:15,19 56:5 57:14,23 59:12 60:7 66:7 66:14 68:5 75:12 76:8,16 76:20 77:3 78:7 82:12 83:13,18 85:17 90:18,19
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[health - ideas]

Page 27

91:24 92:11,17 94:10,25 95:4,5 95:22,23 96:3 96:13 99:4,14 99:16,19,19 100:4 102:2 103:10 111:16 113:25 114:14 114:22 115:22 115:24 116:1 117:20 119:1 120:13 137:24 139:10 148:17 152:8 155:11 155:12,23 165:3 169:1 170:9 176:10 177:3,10,25 178:1,4 179:6 181:6,16 205:23 206:19 207:3,8 215:15 220:8 228:21 236:10,16 237:4 hear 9:22 120:24 209:8 209:24 210:1 heard 17:20 87:14 120:4,5,5 223:1 hearing 8:10 93:17 227:14 heckert 1:25 242:4,24	hedging 205:3 help 52:5 187:19 helpful 10:15 11:6,7 42:8 158:18 helpfully 178:12 helps 131:5 145:7 158:20 henrich 3:20 hey 12:17 61:14 65:13 81:9 82:10 83:10 84:8 87:2 88:2 89:1 99:4 189:20 209:3 218:12 hi 104:18 hiccup 120:25 high 17:24 69:18,18 134:20 147:12 153:9 177:22 179:10 highlighted 238:11 239:7 highlighting 193:22 highlights 190:17 194:4 highly 147:16 hildick 5:15 97:6 hill 3:23	hired 35:11 hiring 35:12 histological 147:15 historical 86:11 146:13,19 152:19 historically 148:15 234:7 history 57:13 77:12 117:12 183:7 194:22 hit 145:1 hold 127:23 172:14 196:25 200:15 201:23 202:14 215:5 237:16 homework 107:13 hope 103:2 hopefully 156:15 187:8 hospital 146:24 149:17 hour 31:2,4 50:14,20 127:25 184:22 hourly 30:24 31:8 hours 20:1 24:24 25:9 26:20,23 27:4 29:14,18 house 32:1 211:18	how's 138:1 hsu 240:25 huge 174:13 hughes 97:25 human 34:24 165:3 170:10 170:18 humans 124:23 125:3 hunch 87:24 hundred 230:5 hurt 104:9 225:9 hypothesis 41:17 74:7,8,15 74:18 hypothetical 43:16,22 71:10 73:5,12
i			
i.e. 52:13 139:17 idea 9:1 30:23 41:2 43:7 47:16 58:3 67:14 85:10 89:23 90:2 92:15 95:18 103:16 105:12 126:22 137:23 142:12 153:25 ideas 71:17 99:11 100:11 101:5 105:7 107:6 136:11			

[identifiable - inform]

Page 28

identifiable 136:5	implant 112:23	231:8	indiana 91:7
identification 125:25 148:1 165:25	implausible 86:24	incidents 202:25	94:13
identified 86:11 101:16 135:13 136:22 171:18 192:14 194:6 211:11	implications 135:14	include 68:1 98:23 122:7 140:22,24 144:3 173:1 178:20 192:12 194:25 197:2	indicate 16:25 70:12 71:4,6 194:19 215:25
identifies 138:25	imply 111:16	included 50:2 67:23 134:7 136:23 160:16 185:10 208:10	indicated 18:12 55:3 126:6 137:12
identify 118:23 140:7	importance 58:23 94:4,5 98:18 104:17 215:12	includes 124:19	indicative 102:9 104:23
identifying 138:12	important 9:3 39:4 41:6 68:21 81:13 96:1 104:11 107:8 131:22 138:5 152:11 166:15 174:11 176:8 195:13 218:16 232:24 235:6	including 48:12 93:12 132:1 172:15	indirectly 42:18
imagine 84:5		inclusive 30:15	individual 28:9 165:10
immense 216:17		incongruency 167:14	individuals 147:11 148:12 223:17
impact 23:3 66:8 105:11 169:11 173:25 180:22 189:11 203:18 217:6 220:1 221:25 223:6,18 227:17 228:7 229:13 230:16 233:5 234:3 236:20	importantly 103:7 216:12	inconsistent 176:17	industrial 185:18
impacted 81:17 208:25	impression 170:3 196:17 199:11	increased 69:21 129:13 171:1	inert 65:8
impacting 231:17	impressions 214:15	incredibly 63:18	inevitability 57:16 154:2
impacts 137:18 229:23	impurities 124:10	independent 155:2 156:25 157:7	infant 63:21
	impurity 118:11,14	independently 155:5 157:10	infants 54:17 55:4,10 110:7 110:21 179:23 182:10
	inadequate 112:4	index 5:1 6:1 7:1 108:10 145:9	influence 221:5
	inaudible 8:15 10:4 13:11,21 13:22 14:23 15:5,13 16:20	indexing 157:16	influences 43:20
			influencing 222:15
			info 27:21
			inform 52:20 68:8 70:24 161:5 212:4

[information - investigation]

Page 29

information	178:13,14	interested 17:1	162:13 176:4
15:17 31:19	180:11 181:21	22:19 41:8 68:3	179:21 186:8
32:10,15 33:9	182:23,25	157:6 174:6	188:24 189:5
41:5 43:17	185:20	197:15 205:9	192:7 207:13
46:25 71:1,3,19	inhaled 125:5	242:18	interpretation
72:17 75:7 78:9	initial 14:23	interests 99:18	137:21 186:5
78:25 79:15	16:20 18:12	internal 5:20	189:11
86:13 116:17	60:5 196:18	57:13,21 59:4	interpreted
119:19 121:10	211:17	59:17 60:25	47:9 134:4
124:9 127:9	initiate 103:21	65:18 75:22	144:17
196:8,9 197:11	104:16	76:7,12 77:19	interpreting
197:17,18,20	innocent 217:1	77:23 84:6,7	139:7 188:21
197:23 199:10	inquiry 76:11	85:12 96:23	188:23
205:14 206:12	106:15	97:15 111:7	interrupt 68:20
206:19 207:13	inside 168:15	113:23 123:17	intersects 38:17
207:14 219:7	insight 83:25	130:6 132:6,9	interval 239:20
222:8,14,18	insights 183:4,4	150:10 174:17	interview
223:23,25	inspection	192:11 210:17	239:13 240:11
224:3 234:5	148:11	226:19	interviewed
informative	instance 46:9	internally	239:16,21
82:13 99:10	62:23 76:16,22	56:14 58:5	intro 9:21
106:17 151:15	110:23 141:6	74:12 116:19	37:15 38:7
ingredient	155:5 176:20	117:17 176:17	119:5,6 120:6
180:9,24 181:2	207:15 220:7	185:25 190:4	178:11
181:13,15	institutional	214:23	introduced
183:13,14	176:19 177:9	interpersonal	181:25
184:8,10,10	instructions	40:8	intuition
ingredients	243:1	interpret 59:23	104:17
180:13	intended	101:2,12 133:1	invariably
inhalation	164:25	133:8,18	124:18
53:22 54:4,4,6	intentionally	134:18 136:8	invested 93:12
54:8,16 55:4,9	56:7	136:12 137:3	investigate 61:5
55:20 109:17	interacting	139:21 140:13	investigating
109:25 110:6	79:2	141:11,19	206:7 230:2
110:20 111:4	interest 103:5,6	144:23 153:9	investigation
124:22 125:2	184:3	153:14 161:8	61:9

[investing - johnson]

Page 30

investing 92:23	29:9,10 38:13	jama 7:4 69:16	49:17,17 52:11
investment	76:13,15 77:5	237:25	53:24,25 54:1,2
98:12,19 99:7	77:18 79:19	january 6:6	55:23,24 56:1,1
99:24 100:6	80:16 85:19	145:7,15,22	56:5,5,25 57:1
111:10,21	94:25 100:15	146:5	58:25,25 59:22
invitation	102:2 111:17	jbp 215:15,17	62:9,12,12,15
191:5	148:1 152:8	216:19 217:13	62:15,18,18,21
invoice 5:3,6	156:18 180:9	jersey 1:2 3:23	62:21 63:1,1,2
19:23 20:3 21:7	185:14 189:19	jewald 3:7	63:3,19,19,23
21:12 25:16	192:1 193:11	job 209:19	63:24 65:24
invoices 24:14	212:8 215:11	joel 3:12	66:1,1,2,2,6,6
24:16,19	219:13 221:3	john 3:4 8:8	66:13,18 71:9
involved 13:12	issuing 48:1	11:9 12:17 27:5	71:10 75:6,6,22
43:2 213:21	169:10	64:20 79:21	75:22 76:7,7
214:25	italian 163:4	90:22 108:8,19	77:1,1,24,24
issuance 21:22	j	108:20 121:24	79:11,11 82:20
22:12	j 97:24	122:20,24	82:20 83:17,17
issue 15:5,13	j&j 5:14 6:14	126:5 127:4	84:5,5 86:25,25
16:6 21:21	6:15 18:14 55:8	128:10 131:9	89:5,5 90:12,12
55:14 72:18	57:6 81:19 97:3	131:12 137:12	91:19,19 93:13
73:10 99:23	97:6 113:24	144:7 145:11	93:13,19,19
102:12 105:1	114:3 130:5	145:14 157:18	95:8,8 96:2,2
108:2 134:15	131:4 152:24	157:21,25	96:12,13,16,16
144:22 148:24	154:14 160:10	158:17,25	97:15,16 99:22
149:20 155:8	174:25 177:15	164:2 182:16	101:15,15
172:9 181:13	187:11,12,23	186:15 195:23	103:12,13
182:2 184:10	187:24 192:11	200:13 202:6	105:8,8 109:15
211:13,21	214:21 226:2	208:2 209:3	109:16 110:25
213:7 215:2	j&j's 64:5	210:7 227:25	110:25 112:2,6
220:7 224:6	100:16 142:6	238:4 241:9	112:7 117:3,3
228:12 236:3	234:8	johnson 1:4,4	129:10,10
236:12,13	j&j000026987	3:2,2 5:20,20	132:5,5,8,8
issued 21:2,17	6:7 146:1,6	6:8,8 14:24,24	139:17,17
22:14 24:15	j&j000040596	16:9,9,16,16	147:7,7,23,23
issues 8:9 9:3	186:11	44:24,24 47:22	148:3,3 150:11
17:9 23:8,8,9		47:22 48:2,2	150:11,11,12

[johnson - kind]

Page 31

150:21,22	228:23 229:8,8	jr 2:14	kind 15:18
151:6,6 153:13	231:22,22	judgment	16:15 23:20
153:13 156:20	233:5,18,18,19	50:11	27:12 29:24
156:20 161:9,9	233:19,21,21	july 13:19,23	32:9,23 33:10
161:12,12	234:22,22	14:5 15:14 16:4	33:13 35:16
162:16,16	235:23,24	16:21 18:1,13	38:9 39:3 41:11
163:19,19	236:3,4,21,21	28:1 29:6 108:5	41:14,20 42:2
167:12,12,19	244:3,3	109:1,2 124:1	43:18 44:4,14
167:19 168:5,5	johnson's 5:16	165:10	44:15 45:23
168:9,9 169:14	14:20 16:11,12	jump 70:20	46:13,14 56:18
169:14,15,15	52:21 53:10	96:9	59:25,25 60:18
169:18,18,19	56:12,13 58:25	june 5:14,17	65:14 66:25
169:19 171:19	59:6,22 62:9	13:19,22 14:5	67:6,14,19
171:19 173:4,4	63:23 65:25	15:14 16:4,21	71:18 72:20
174:6,6,20,20	66:13,19,24	18:1,13 97:2,5	74:10,18,19
175:8,8 185:13	74:24 85:11	97:8 98:1 170:9	79:15,16 81:6,8
185:14,15,15	89:24 94:18	justification	84:6,12 86:7
185:24,24	97:7,17 99:22	84:12	87:2,7,24 88:24
189:9,9,16,16	106:5 109:17	k	93:6 94:21 99:4
190:2,2 204:5,5	110:6,25 112:2	k 2:7	101:6,7,8,21
214:16 215:20	156:24 214:16	kalmer 98:1	102:1 105:12
215:21 216:6,7	219:22 225:11	kansas 51:2	113:24 115:18
216:8 218:11	226:13 227:12	keep 50:15,25	119:13 120:14
218:12,16,16	228:9 233:5	51:4 109:24	133:9,18
219:7,7,22	241:1	128:13 176:14	134:16 137:22
222:21,21,22	johnson's	180:19 184:22	137:23 141:13
222:22 223:15	52:12,14 216:1	kessler 21:25	141:16 148:23
223:15 224:11	216:3,5 226:1	22:16,19	156:15 159:7
224:11,14,15	joined 36:6	kessler's 23:4	162:8 167:14
224:20,20	joint 132:13	23:15,25 24:9	167:20 176:19
225:2,2,5,5,7,7	213:21	49:6	177:8 186:2
225:10,17,17	journal 54:9	kevin 3:21	187:18 189:22
225:24,24	98:2 221:2	killing 179:19	189:25 191:23
226:13 227:12	238:20	kilmer 32:1	193:6 199:4
227:19,19	journals 54:9	211:18	206:2,2,11
228:9,19,20,23	166:22,23		212:6 214:7

[kind - label]

Page 32

220:19 222:13	56:10,14,19,21	151:10,11	219:10 221:7
226:25 228:13	57:12,14,16,17	153:8 155:1,11	222:4,5,5,5,7
228:16 229:17	58:2,16,17,21	155:16 156:1	222:24 223:21
kinds 32:2	58:22 59:1,16	157:17 159:19	224:2,18
42:23 78:23	59:20 60:12,15	160:8 161:2,16	225:19 226:21
85:19 119:11	62:16 65:3 68:5	161:16,18,19	226:23 227:2
130:11 141:8	69:7 70:21	162:15,19,20	228:15,17,21
168:19 206:12	74:16 76:17	162:24 166:15	228:25 229:2
207:14 222:18	79:22,24 83:1	166:21,22,25	229:18,19
king 3:3	84:4,6 85:18,22	166:25 169:9	230:1,6 231:16
kkotch 3:24	88:9,16 89:21	169:19 173:3	231:18,18
knew 45:3,13	89:21 90:8,23	173:20,20	232:18 233:7
56:5 93:19	93:22 94:11	174:5 176:8,10	233:20 234:22
know 8:11 9:11	99:12 100:1,8	176:13 179:20	237:5,7 238:15
9:24 11:22 12:6	100:22 101:3	180:7 181:18	240:22
12:12,14,25	101:22,24	182:23 184:12	knowing 82:23
13:7 15:20,22	102:3 105:2,3,3	184:15,16	83:8 235:7
16:14 17:7,21	105:4,6 106:18	185:16,17,24	knowledge
18:19 19:1,4,10	107:12 108:21	185:24 187:17	47:11 107:9,14
19:19 22:6,8	109:9 111:6,14	188:2 189:8,21	knows 85:7
23:10,11,18,21	114:5 115:1,6,8	189:24 190:2	228:24 236:16
25:1,1,2,3	115:13,14,15	191:17 192:6,7	koberna 107:20
26:20 29:11	117:10 119:3,5	193:7 194:6,7	107:23 108:1,6
30:18 31:20,22	119:8,14	195:11 198:11	112:9 181:24
32:3,25 33:1	120:14 122:17	199:3,3,6,7,25	koberna's
35:17 37:4	123:1,9,25	200:18 201:12	176:22 181:16
38:14 39:2,3,5	126:12 127:17	201:17,22	183:1
39:5,8 40:10,15	128:7 130:3,5	203:24 204:8	kotch 3:21
41:21 42:3,5	130:10 131:21	204:10,12	kslaw.com 3:7
43:1 45:2,5,10	133:22 134:14	205:4,13 206:5	I
45:14,20 46:7	134:15,15,16	206:16,17	la 2:16
46:20,23 47:7	134:19 136:17	208:21 210:13	label 49:23
47:10,10,11,14	141:12,16	212:2,11	169:6,23 173:9
48:12 50:10,24	144:24 146:14	214:21,23,23	180:3
51:1 52:7 53:13	148:8 149:3	217:23,25	
53:20 54:12	150:21 151:9	218:2,3 219:2	

[labeled - literature]

Page 33

labeled 124:7 165:12	launched 82:16 176:24	leigh.odell 2:24	limited 47:12 53:11,14
labeling 105:18 109:20	law 10:9 19:24 155:13,23	leila 1:25 127:11 232:9	line 35:13,18,18 97:16 109:22
labelled 20:17	160:25 213:20	232:21 242:4	132:7 153:24
labels 106:6	law.com 3:24	242:24	244:10
laboratory 147:5,12	lawsuit 213:13	lend 58:3 142:12	linear 118:13 120:11
149:13	lawsuits 223:14 239:12 240:12	lends 95:17	lines 183:8
lack 40:1 81:2 209:22	240:13,21	length 176:5	linguistically 196:12
lake 2:16	layperson 144:22,22	lengthy 84:16	link 17:2 100:23 112:21
landmark 81:8	lead 44:12 71:19 74:15	letter 6:13 123:24 164:14	113:13,15
langer 149:18 150:13,23	197:10,21	165:9 167:24	114:6 116:7
language 50:1,4 57:15 65:3	leader 149:15	168:21 187:10	120:18 186:6
66:22 68:12	leading 62:20 88:5	letters 126:17 157:22	193:2
94:21 134:18	leads 74:17 90:5	letting 114:4	linking 149:24 150:14
181:22	learn 78:23,25 213:6	level 17:24 37:3 69:19 77:23	links 208:10,11 208:17
languishing 44:16	learned 28:15	79:1 117:16	list 30:10 51:7 80:9 121:16,16
large 70:10 84:5 86:25	learning 22:8 25:5 30:16 46:9	153:9 189:17	122:6 126:8
98:11,19 99:7	led 160:8	224:13	172:21 192:13
100:6 192:18	left 34:19 57:7 164:12 165:16	lewin's 151:10	212:10 214:1
194:16 226:5	legacy 65:10 231:21	liability 1:7 244:6	225:6 237:23
237:2	legal 214:1	lies 226:22,23	listening 232:14
largely 11:16 37:20 106:16	legend 190:15	light 236:14	literally 61:20 88:12 102:22
larger 41:12 58:21 103:8	legislation 94:16	likely 63:2 136:16 171:5	121:4
104:10,23	leigh 2:21	195:7 239:5	literature 31:21 31:22 73:16,22
170:5 221:9		likert 71:12 72:7	75:8 78:10
late 128:7 237:8		limit 33:13 141:23	113:18 162:22
		limitations 142:1	

191:2 205:21 207:1 211:25 220:10,20 litigation 1:7 13:13 20:12,25 24:16 27:18 48:15 191:15 223:12 226:9 226:16 227:17 228:8 229:6,11 229:22,23 230:4 231:5,16 231:16,18 233:19,21 244:6 little 9:21 22:24 27:21 29:23 38:21 45:11,14 46:2 54:24 70:2 73:11 95:15 97:15 105:24 109:21 124:2 128:5,8 139:5 140:12 162:9 164:20 170:8 181:11 184:18 187:18 188:4 190:6 208:24 209:8 210:12 212:3 222:25 233:8 235:4 238:21 live 193:15 llp 2:4,13 5:4,7 20:4 21:13	located 10:8 69:8 location 42:24 logic 87:25 169:13 logical 238:16 long 12:4 19:9 26:17 57:13 67:7 72:16 93:8 93:11 100:19 153:24 183:7 190:1 193:20 197:16 231:21 234:13 longer 27:4 128:5,8 135:17 longo 48:12,20 look 11:25 12:12 14:10,19 15:25 16:19 17:3 22:1 41:6 66:20 74:14 78:4 84:21 85:1 99:17 102:25 103:4 104:3,9 108:4 109:12 116:13 124:2 126:23 127:5 128:19 129:3 133:23 138:2 139:2 141:6 151:19 152:16 153:17 156:2 156:20 157:12 159:16,18 167:5,17 177:1	186:9 201:13 208:16 210:3 214:20,24 215:4,5,7 218:19 225:13 225:18 227:3 228:12,13 235:18 237:5 238:8 looked 15:16,18 43:2 61:15,15 156:7 160:13 161:20 162:25 191:18 193:17 193:18 212:12 213:1,7 220:6 222:6 229:22 looking 10:19 12:13 15:21 16:7,13 17:6 18:13 21:22 22:12 23:10 25:18 29:8,9 31:19,20,21,25 32:5,8 41:10 43:14,20 46:4,7 74:16 76:11 77:17,18 79:8 89:16 101:22 108:10,25 157:25 158:20 162:11 163:1 164:22 186:23 189:25 191:25 192:25 199:10 200:17 212:18	215:2 219:5,6 looks 96:4 123:2 133:4,10 133:14,15 134:8,22 loopstra 1:11 10:10 lord 147:8 loss 236:6 lost 204:2 228:4 lot 40:8 41:22 42:21 43:6 46:25 56:14 57:21 58:1 59:2 59:3 63:6 81:25 82:6,9 83:3 85:12 92:23,24 93:7 95:17 96:4 115:21 117:10 126:19 127:8 148:16 153:10 174:9 183:10 190:5 192:2,7 192:21 196:13 201:22 202:16 215:1 222:23 226:24 234:11 lots 58:5 88:3 175:1 206:18 210:16 love 63:14 loyalty 220:25 lunch 126:24 128:1,7,15 163:11
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[lundy - masks]

Page 35

lundy 2:13	make 9:4,5,7,11	man 161:25	marketed 50:8
lung 102:6	9:23,25 12:15	management	marketing 1:5
113:20,21	12:19,24 13:2	6:9 34:24,25	14:19 16:9 17:8
153:15,19	36:6,13 48:5	36:20,20,21	18:14,20 23:9
170:13	50:11 57:3 62:3	163:20 221:3	29:9 34:24
m	62:7,13 69:7	manner 43:13	36:21 38:14,18
m 1:25	70:20 82:7 92:7	43:13 222:20	42:6 52:13
m.d. 1:11 4:2	100:23 102:1	manufactured	63:14 64:2 67:1
8:3 244:8,25	118:1 121:5	140:6	74:9 75:2 76:3
245:14	127:21 135:11	manufacturing	76:11,13,15
machine 67:2	141:8 155:8	42:24 45:21	77:5,18 79:19
made 49:23	159:1,14 160:2	march 6:11	79:20 80:16
77:7 82:15 84:1	179:18 183:12	158:24 163:18	82:7 87:22 88:9
87:14,16 90:9	191:6 195:15	163:21	90:13 91:7
96:18 97:23	197:17 204:12	mark 19:16,22	93:22 94:18
105:18 106:5	205:13 206:2,3	21:6 34:11 51:5	95:9 100:17
130:20 147:14	206:4 210:12	51:12 61:21	119:6 152:12
154:13 158:4,7	215:18 220:24	83:5 96:25	167:13 168:18
243:7,15 245:6	224:5 243:4	103:13 122:16	174:9 183:3
magnitude	makes 9:13	123:11 131:4	192:1,8,21
72:12	52:2 138:14	163:16 178:10	193:10 214:10
main 179:5	140:7 158:3	200:20,25	215:11,17
236:12,13	198:6 220:13	212:17	218:18 219:13
238:23 239:1	makeup 6:22	marked 163:10	233:23 234:3
maintain 86:1	212:25 213:2	market 62:9,11	235:7,13 236:9
maintaining	making 23:12	63:6 65:25	244:4
180:23	32:9 41:20	66:19 67:5	markets 235:14
maintains	47:25 64:9 66:6	81:13 82:21,22	235:14
190:14	67:1 71:20 78:2	83:20 84:22	marking 132:4
major 9:11	81:11 86:6 90:7	86:1 87:12 89:9	145:22 187:9
239:11 240:12	91:4 92:24	93:1 94:12	200:13,15
240:13,21	115:11 168:14	95:12 114:16	237:20
majority 25:25	179:1 204:18	148:21 154:3	marks 87:5
198:4 199:7	206:24 243:8	172:6 224:23	mas 1:6
	245:8	225:11 236:7,8	masks 196:21
		237:8	

[material - methods]

Page 36

material 11:2 30:17 125:16 128:22 135:9 135:22 materials 8:21 10:16,22 11:1,2 12:18 15:18 16:18 19:1 30:4 30:8 31:16 47:1 48:10 59:2 75:3 76:3 80:8 93:23 107:18 108:5 131:6 132:20 135:12,24 138:9 158:22 158:22 167:13 168:18 179:4 213:25 233:22 matter 11:15 27:25 48:7 155:19,21 156:11,12 187:22 189:12 235:13 matthew 80:24 mcdevitt 3:20 mctiernan 48:24 mdl 1:5 2:3 33:18 214:2,5 223:12 mean 18:8 20:20 25:15 31:17 39:2 42:20 46:21 50:21 54:23	58:15 60:11,22 63:8,19 66:16 67:3,11 72:12 74:3 77:16 78:14,18 79:6,7 86:18 93:7 95:14 99:25 100:8,18 101:10 103:1 104:21 106:11 106:15 107:8 115:4,25 118:2 119:4,11 120:4 130:2,18 133:7 137:23 140:11 141:3,13 144:16 154:7 156:2 161:13 166:18,23 170:2 171:24 172:8 173:2,15 179:14 180:7 181:10,18 182:7 185:16 205:11 214:19 217:20 221:9 222:3 226:18 226:20 228:11 229:16 234:17 238:11 means 26:22 89:24 93:13 131:7 153:2 196:14 223:8 230:18	meant 84:24 163:17 measure 41:7,8 41:15 measurement 229:1 mechanisms 103:24 206:9 media 226:2 mediating 221:1 medical 32:23 54:9 147:8 148:12 152:4 154:23 177:19 medicine 149:14 meet 26:7,10,13 26:17 meeting 20:15 meetings 26:16 61:1 218:18 236:9 memo 5:14,20 96:23 97:2,5 104:16 132:6,9 memorandum 170:9 memory 159:10 194:2 memos 60:25 mention 65:5 71:9 90:18 106:21 139:8 172:18 182:24	mentioned 16:21 27:9 36:8 76:22 90:6 98:7 145:4 148:12 175:19 193:7 194:4 218:23 mentioning 95:23 152:3 mentions 113:17 186:2 merits 163:6,7 mesothelioma 55:14 213:14 message 56:18 65:17,18,22 189:8 228:23 228:24 messages 234:3 messaging 67:6 67:10 188:25 189:7 met 8:7 26:11 26:15 meta 190:22 198:20 method 41:10 41:19 44:3 137:5 144:19 145:1 180:25 methodologies 41:22,24 methodology 72:23 166:25 167:1 methods 40:20 40:24 42:1,2,22
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[methods - moving]

Page 37

42:24 125:24 165:24 166:16 michael 6:14 187:11,24 michelle 2:5 10:12 11:6 13:4 13:15,17 26:11 29:4 64:17 122:16 186:12 michelle's 69:10 microscope 136:6,19 middle 136:21 196:10 mike 188:9 millers 163:4 mind 45:13 61:11 62:3,7,13 64:10 68:15 85:20 93:10 95:9 101:7 102:13 111:15 114:19 122:1 142:12 155:8 167:3 180:17 191:6 199:15 229:17 minds 134:21 224:5 mindset 227:12 229:23 230:8 231:19 mine 23:22 59:21 98:12,19 99:7,20,24	100:7 103:5 111:10,21 124:18 132:14 132:18,22 133:6,12 141:17 142:19 142:21 143:18 162:17 238:9 238:10 mineral 168:1 mineralogist 149:19 minerals 5:21 125:11,25 132:7,9 135:16 142:24 143:10 165:25 167:11 miners 163:4 minimize 159:16 mining 124:19 minute 62:22 131:15 163:13 minutes 80:3 128:8,11,14 159:9 184:22 241:10,14 misinformation 226:7,15 misinterpreted 171:4 mislead 119:10 misleading 18:20 52:16 55:24 56:2,23 65:1 68:6 74:9	74:19 81:18 90:13,16 91:3 114:20 118:22 119:17 120:20 121:10 148:5 155:6,7 157:1 175:12 misled 112:7 114:4 misrepresents 203:21 misspoke 230:24 misstate 119:10 148:6 misstates 59:14 60:9 62:17 64:13,19,24 86:15 87:18 89:12 92:3 102:18 104:5 104:18 105:20 153:5 154:18 155:24 173:13 180:4 182:17 197:25 198:25 207:21 231:14 mistakes 227:20 misunderstan... 52:18 misunderstood 107:11 mixed 105:24 modification 106:13,22	modified 24:9 modify 49:12 moment 17:11 108:14,20 126:2 128:25 131:9 145:6,11 157:19 172:1 188:1 202:5 231:3 238:5 moms 182:3,5 183:5,6 money 92:23 93:12 148:25 201:18 montgomery 2:23 month 21:21 22:12 24:6 morning 217:25 morphology 134:10,16 mother 63:21 215:24 mount 146:24 148:11 149:14 149:17 mounting 116:17 move 127:3 179:12 183:23 184:4 moving 35:17 112:24 128:13 135:18
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[mparfitt - numerous]

Page 38

mparfitt 2:10	179:18 183:22	newman 1:10	68:25 151:9
multi 201:21	243:18	4:2 5:6,12 8:3,7	178:11,17
multiple 82:2,3	needed 89:1	10:14 11:16	november 5:5,7
189:1	197:13	17:15,19 19:24	5:11 20:5 21:2
n	needle 46:13,18	21:7,13 51:14	21:10,14,18
n 2:1 3:15 4:1	needs 15:7	51:19 69:25	22:15 24:11
name 8:8 48:25	50:23 235:8	80:7 91:1 106:3	33:22 34:4,9
71:11 124:1	negative 99:15	120:22 122:6	49:13 51:5,9,16
151:11 211:2	162:6 171:9	124:13 128:18	124:5 165:11
243:11 244:3,8	180:21	185:5 209:14	nuanced 42:2
names 210:17	neither 107:24	241:6 244:8,25	72:20
naming 222:21	242:12	245:14	null 74:6,8,15
napkins 170:23	neuroscience	newman's 5:3,9	74:17
narrow 215:2	40:13,13	5:11 6:12 20:3	number 6:7,15
national 115:23	never 27:9	34:14 51:8	20:17 26:20
natural 46:10	57:25 65:14	178:17	63:3 69:18 72:4
118:9 120:10	82:15 84:10,11	nine 10:20	73:18 76:14
205:5,5	86:21 87:3 88:1	niosh 162:17	97:3 99:14,16
nature 38:16	88:1,6,7,11,18	nixon 1:11	103:11 123:13
38:20,25 64:8	88:19 90:18	10:10	123:18 131:7
65:19 67:7	95:8 114:18,23	non 129:12	137:24 145:8
68:10 78:7	126:7,11,13	172:9 206:16	145:25 146:5
218:10 221:15	134:21 167:20	normative	151:23 152:10
navigate	171:15 174:22	206:4,23	180:8 181:15
206:10	206:2,3,4	notary 243:19	186:11,24
nda 28:20 29:1	nevertheless	245:22	187:12,23
near 51:6	82:22	note 69:7 97:24	192:19 218:19
necessarily	new 1:2 3:6,23	112:19 127:22	220:5 228:22
18:15 156:17	26:3 31:12 91:6	130:20 220:24	236:8
212:12	93:2 102:5	notebook	numbering
need 8:11 9:10	130:21 141:20	122:21	130:21
11:20 12:12	144:19 145:1	noted 111:20	numbers
13:1 52:5 82:5	146:24 149:17	129:9 243:9	157:23 158:21
122:19 123:9	150:3,6,13	notepad 11:4	192:12
129:12 169:5	202:25	notes 6:12	numerous 84:2
		10:25 11:1,4,8	

[nw - okay]

Page 39

nw 2:7	175:15 177:20	odds 239:19	92:6,14 93:10
ny 3:6	180:4 182:12	offer 24:10	96:10 98:10
o	182:16 188:18	86:13 113:3	100:12 101:6
o'brien 237:21	197:25 198:25	166:10	101:14 105:15
o'brien's 7:3	199:21,24	offered 89:22	107:5 108:20
237:24	204:23 205:25	offering 23:5	108:22 109:5
o'dell 2:21	207:5,21 212:1	33:22 34:9	109:11,12,15
oath 9:18	214:18 223:20	47:21 48:7,20	110:14 112:11
object 113:6	224:22 227:20	49:16,21,25	113:10 114:12
155:15 156:12	229:15 230:23	57:8 73:15,21	116:24 121:15
195:22 203:20	231:9,12 235:9	81:17 100:13	122:25 123:1
objection 22:22	236:24 240:5	154:15 168:8	124:16 129:2,7
32:20 45:16	240:15	204:18 221:19	129:24 130:17
48:8 57:9 58:14	objectivity	233:1,4	130:25 135:4
59:14 60:9	72:25	office 170:12	138:6 139:9
63:16 64:13	obligations	officer 242:4	140:21 142:15
73:8 77:14	49:18	offices 1:11	145:10,18,21
81:20 86:15	observe 189:25	10:10	146:17 152:9
87:18 89:12	observed	official 165:2,5	153:21 157:12
92:1 101:18	100:19 192:3	oh 39:1 66:20	158:14 160:3,4
102:18 104:5	observing	68:24 112:10	160:10 162:15
104:18 105:20	239:15	164:2,2 184:21	163:23 164:5
107:1 110:8	obtain 92:19	196:19 197:8	165:14 173:6
115:3,12 116:9	103:22	204:2 228:15	174:10 175:24
119:25 134:12	obvious 140:19	241:4	176:3,23
137:1,11	153:22	okay 8:13 10:1	177:12,24
138:17 139:4	obviously	10:2 11:22 12:5	180:16 186:4
140:10 141:2	204:15	12:15 13:16	187:8 188:3,5,8
143:3 148:6	occasionally	17:21 19:22	188:10 190:9
150:16 151:1	136:3	25:18 36:8	190:12 194:2,9
152:21 153:5	occurred 43:25	51:10 57:2,4	194:12 197:8
154:18 155:24	occurrence	64:24 67:25	200:24 202:10
157:8 166:8	46:9 147:15	68:18 69:1,2,13	202:11,14,15
170:1 171:23	october 19:10	70:2,6 72:2,21	202:21 203:13
173:13 174:4	20:15	75:15 76:24	204:3 206:22
		81:22 91:2,18	210:1,3 211:12

[okay - overestimate]

Page 40

211:19 212:5 213:10 219:3,6 219:20 220:21 220:23,24 223:11 224:9 225:16,21 228:5 232:12 232:18,23 234:24 238:10 241:4,5,8,11 old 45:22 omitted 209:12 once 17:25 35:18 one's 188:4 ones 40:25 47:2 193:10 online 15:18 31:20 32:6,9,16 46:7,23 194:5 211:13 onset 230:3 ontario 1:12 10:9 242:3 245:1 open 35:19 148:23 159:15 187:3 opening 86:2 opens 35:14 operations 88:25 opinion 22:7,21 23:18,18,20 28:16 53:4 56:3 56:4,8 65:23	70:14 79:4 81:16 82:19 83:19 86:13 87:15 89:4,10 89:13 95:6 100:13 101:20 113:3 114:3 117:5,8 118:1 119:17 131:22 137:18 138:5 148:14 154:15 166:10 168:9 171:25 174:1 175:11 188:13 189:18 204:19 212:13 213:5 223:9 228:17 229:8 230:9,22 231:1 233:20 235:23 opinions 23:5 23:15,15 24:10 30:8 33:21 34:8 47:21 48:1,6,20 49:8,9,13,17,22 50:157:7 66:6 67:20 71:25 72:15 77:2 80:20,21 82:14 98:20 112:1 161:5,7 169:11 173:12 189:12 197:4,6 203:19 211:7 212:4 221:19 230:12 232:25 233:1,4	235:21 opportunities 138:15,15 opportunity 62:3 126:9 opposite 205:8 227:21 optical 136:5 136:18 option 139:13 options 93:6 139:3 order 236:6 ordered 128:12 organization 44:6 156:23 203:15 212:3 organizational 34:23 37:16 38:7 organizations 37:22 origin 150:1 164:23 203:25 207:16 original 243:21 orleans 91:6 ought 206:6 outcome 41:6 242:19 outlines 81:9 outlining 87:25 outright 185:21 outside 115:15 144:20 153:17 154:21 220:16	outsized 217:6 219:25 221:25 223:6,18 229:13 230:16 236:20 outward 137:22 outweigh 85:23 87:17 ovarian 7:6 32:17 53:12,14 53:15 55:14 57:1,6 69:21,24 70:9 71:7 75:20 102:7 113:22 114:7,11,15 116:8 147:4 153:19 170:15 170:23 171:2 173:10 174:18 178:7,16,21 179:2,7 181:8 183:22 186:7 188:15,15 194:15 195:11 200:8 201:11 203:7,17 213:14 214:11 223:16 229:12 238:2 239:18 ovaries 112:25 ovary 202:17 overall 19:7 59:1 overestimate 195:8
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[overestimation - parfitt]

Page 41

overestimation 195:4	151:5,16,16,19 152:17 160:2	55:17 68:14,17 68:18 69:4,13	parentheses 177:14
overlap 23:9	164:14 165:1	70:18 72:22	parfitt 2:5
overlapping 41:23,25	165:16 167:23 168:20 172:14	74:21 76:2 80:23 81:15	10:13 11:9,13 12:17,22 13:7,9
overview 37:18 37:22	172:17 175:25 176:1 178:10	92:13 94:11 96:7,9,22 97:12	13:15,17 14:2 14:18,23 17:16
own 59:23 62:3 62:7,9,13 63:25 64:9 65:25 66:19 70:24 84:21,21 90:4,4 99:20 120:15 155:8 166:20 205:11 218:18 224:5 225:3	178:11 185:6 187:7 188:5,12 190:8 198:4,15 199:9 200:21 201:18 202:17 202:25 215:9 235:18 238:20 238:20,22 244:10	100:1 103:4,4 103:14,18,18 104:14 112:16 112:20 129:5 131:3 132:12 133:2,19 134:25 136:9 136:11 141:11 142:19 144:17 144:17 148:2 153:2 159:25 160:4,5 165:17 167:6 172:15 172:17 181:23 184:18 185:6 188:4,9 189:15 190:8 196:10 196:11 198:8 198:15 199:9 203:10 215:9 225:18 235:19 235:20 238:22	22:22 24:15 26:11 27:3,5,7 29:4 30:19 32:20 33:15 44:23 45:16 48:8 50:17 57:9 58:14 59:14 60:9 63:16 64:13,19 69:25 70:4 73:8 77:14 79:21 80:2 81:20 86:15 87:18 89:12 90:21,25 92:1 101:18 102:18 104:5,18 105:20 107:1 108:8,13,16,19 109:1,5 112:12 113:6 115:3,12 116:9 119:25 121:24 122:3 122:20,24 123:5,12,19,21 126:5,21,25 127:3,8,16,20 128:4,10 131:8 131:12,15,18 134:12 137:1
ownership 85:1	pager 69:11 159:6		
p	pages 10:25 11:8 123:10 126:17 128:21 152:20 191:14 201:22 202:13 202:15		
p 2:1,1 72:12 p.c. 3:20 p.m. 128:15,16 185:2,3 235:1,2 237:17,18 241:15,16,20	paid 160:9 paper 10:17 12:14 14:11 81:8 118:24 207:1 215:7		
packaging 106:6 135:24 138:8	papers 118:8 207:12,18	paragraphs 130:15 176:1 181:8 183:17 185:11 235:22	
page 5:2 6:2 7:2 12:11 20:14,16 27:6 69:3 81:15 109:22 112:15 123:23 129:5 132:3 134:25 146:12,13,16 149:10,11	paraffin 147:14 paragraph 14:10,16 18:5 18:16 36:9 52:6 52:9 53:2,9	paraphrasing 82:3 100:2 133:21	

[parfitt - percent]

Page 42

137:11 138:17	227:20,24	44:1,6 47:4	220:6
139:4 140:10	229:15 230:23	68:14 113:4	penalty 245:5
141:2 143:3	231:9,12	115:9 169:20	pending 9:12
144:5,11,14	234:25 235:9	190:7	people 26:22
145:10,14,18	236:24 238:4,7	particularly	37:20 39:8
148:6 150:16	240:5,15 241:9	22:19	41:15 58:18
151:1 152:21	241:13,17	parties 242:14	66:21 67:12
153:5 154:8,18	parse 70:19	242:17	70:25 71:2,14
155:15,24	95:15	partners	72:4 81:9 89:1
156:12 157:8	parsing 139:6	213:20	100:3 120:18
157:18,21,25	part 18:9,12,19	parts 122:18	141:15,17
158:6,12,17,25	28:14,25 30:4	126:12 131:25	150:12 155:7
159:7,13	39:22 40:12,14	191:12	156:22 161:20
163:12 164:2,5	42:5 86:7 87:10	party 157:5	174:20 184:23
166:8 170:1	95:15 107:18	past 129:11	185:15 186:1
171:23 173:13	114:20 123:9	195:1 231:6	194:22 195:6,9
174:4 175:15	126:20 136:11	patents 92:19	197:16 204:6
177:20 178:12	138:19 140:18	93:12	205:6 206:9,15
180:4 182:12	140:22 143:13	pattern 104:24	210:16 218:19
182:16 186:14	149:6 151:15	221:9	222:15 225:3,4
186:20,23	156:25 161:7	patterns 41:12	225:7,14
187:1 188:6,18	161:19,21,23	220:19	226:22 228:18
195:22 196:3	170:7 193:14	pause 127:24	229:3,19
197:25 198:25	194:9 212:17	pausing 42:15	231:17 234:3
199:21,24	214:5 221:9	43:5	236:15
200:13,17,24	226:5 230:22	pays 218:25	people's 39:6
201:15,24	231:1 235:13	pdf 123:24	44:5 67:8
202:1,5,11,19	239:25	164:15 193:13	118:12 222:16
203:20 204:23	participants	200:21 212:24	231:19,23,24
205:25 207:5	239:5,7	238:19	pepsi 39:9 67:9
207:21 208:2,5	particle 46:13	pediatrics	218:1
208:8,17,21	124:9	54:10	perceive 225:4
209:3,5,17,23	particles	peer 56:11 75:7	225:7
210:7,11,20	124:22	113:18 118:24	percent 61:18
212:1 214:18	particular 22:1	190:21 191:1	65:2 118:10
223:20 224:22	22:16 41:16	198:19 205:21	120:11 205:6

[percent - position]

Page 43

239:20,22 perception 218:3 perceptions 38:17,20 39:1 39:18 40:21 43:21 67:8 70:24 118:16 233:18 perfect 11:12 163:23 perfectly 204:12 218:6 perineal 112:25 174:23 perineum 170:22 period 84:3 92:5 93:8,11 100:16,20,21 104:25 114:9 174:8,11 190:1 222:2 230:1 periodically 16:24 periods 176:18 224:25 perjury 245:5 person 70:19 100:9 157:7 177:22 211:20 personal 3:19 personality 40:10 perspective 38:15 79:17	persuaded 125:8 pertain 193:10 pertained 14:20 pertaining 29:10 pervasive 100:15 petition 121:17 121:20 122:12 124:6 125:7 128:20 164:11 165:11 172:18 172:23 173:8 173:17,18 petitions 122:8 172:16 174:1 phase 91:14 phenomenon 103:22 239:10 phillippe 123:25 phone 16:24 20:14 26:16 phrase 71:4 81:2 101:13 142:25 143:2,7 pick 70:5 picture 77:12 121:9 piece 66:5 224:12 227:13 pile 116:17 pilot 68:7,10 70:23 71:24	196:18 197:1 place 17:17 36:3 79:22 87:8 88:1 105:5 117:6 places 88:3 236:8 plain 134:18 141:10 plaintiff 2:2 33:17 48:11 155:23 229:11 plaintiff's 22:14 76:2,6 155:13 192:23 214:11 plaintiffs 3:10 223:14 plan 88:4 planning 85:24 plans 6:6 92:24 145:25 146:5 play 219:13 222:19 232:11 played 77:13 232:20 players 214:25 please 8:9 9:10 9:24 12:14 64:15 154:8 185:6 188:1,19 228:3 232:4 233:11,14 plunkett 48:24 48:25 49:1	point 8:10 9:9 9:11 17:19 18:3 19:4 33:14 46:22 47:4 59:19 62:11,17 64:4 65:6 86:4 91:9 92:14 94:9 104:10,11 123:8 139:8 146:19 152:6 152:14 179:5 209:21 220:24 221:15 234:4 pointing 52:5 168:14 points 189:1 205:13 police 187:16 pollution 149:16 pooley 147:6 pops 158:23 population 237:2 portion 117:22 164:18 portrayed 216:25 posing 73:5 position 23:6 34:22 35:13,18 36:4,6 59:11 60:6 106:9 151:7 153:8 171:19 221:21
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[positions - pretty]

Page 44

positions 174:14	235:16	212:25 213:15	preferred 93:25
positive 145:1 171:11	potentially 59:5 68:6 113:22	216:2 226:1	preferring 66:1
possession 77:4	120:20 139:12	236:11 238:1	prefers 128:3
possibility 59:20 86:12	140:5	239:6,17 241:1	preparation 26:8,14 34:4
112:21 113:13	powder 1:5	244:4	preparing 19:8
114:6 118:6,14	5:16 7:4 14:20	powders 78:8	presence 129:23 149:21
118:18,25	15:1 16:10,10	150:5 183:5,6	192:4
119:19 125:14	16:11,12 29:10	powder's 216:9	present 6:3
138:25 239:3	52:14,22 53:4	power 85:22	24:23 30:18
possible 12:9	53:10 55:16	pr 85:13 156:22	54:21 124:22
53:17 58:16	56:13,13 57:24	practice 32:24	130:23 135:12
94:15,19	57:24 58:24	154:16,22	135:15 145:15
103:20 104:15	59:6 62:25 63:1	practices 18:14	145:23 146:2
144:1 189:5	63:3 66:24	52:12 119:5,7,8	197:19 230:2
194:24	69:24 70:9	119:15 191:4	230:19 231:4
possibly 25:14	74:24 75:20	practicies 1:6	231:19 233:2,6
25:14 105:4	82:4,9,21,22	244:5	234:18
post 127:22	84:14,14 85:11	pre 44:5 216:21	presented 142:9 170:18
148:16 152:6	89:2,24 92:8	preceded 232:5	197:11
posture 135:17	94:17,18 96:15	precedes 197:23 235:20	presenting 121:9 196:19
potential 28:22	96:17 97:7,17	preceding 152:20	224:6
50:3 58:10 59:7	98:4 100:4,5,24	precious 66:23	presently 125:9
59:12 60:7,18	109:17,24	66:25	149:16 151:24
62:4 66:7,14	110:7,25	precisely 220:7	presents 85:4
68:9 75:12 76:8	129:12 132:16	predict 82:10	185:20
77:3 116:7	135:6 136:2	predicting 41:17	press 149:22
120:13 130:9	151:24 156:24	preexisting 222:16,23	150:12 156:21
140:7 152:1,4	170:21 172:5	prefer 95:13	presuming 83:4
177:10 180:21	179:7,12	128:2 176:24	pretty 148:18
195:2,4 205:23	180:19 182:4,5	preference 12:4 30:10 39:9	192:5
217:5 219:24	182:10 190:20		
220:12 221:24	190:25 194:16		
223:5 230:15	195:16 198:22		
	203:8,18		
	211:14,14		

[prevented - project]

Page 45

prevented 64:9	104:3,8 154:24	82:2 83:5,18,20	15:2,2 16:10,10
prevention	problematic	84:22,23,24	16:15,17 29:11
173:8	156:17	85:6,12 88:14	29:11 42:14
previous 160:7	problems 23:2	88:15 89:7,17	47:23 52:14,22
163:16 167:6	93:1 110:1	90:17 91:10,15	53:5,11 55:16
175:14 239:2	127:18 152:1,3	92:19,25 93:1,2	56:13 57:17
primary 62:19	152:4 153:21	94:14,19 95:2,3	58:24 59:13
principle	procedure	95:3,24 99:5	62:21 68:4 75:5
206:13,14	136:18	101:11 103:6	77:25 82:11,15
principles 39:4	procedures	103:14 105:18	84:10,13 92:12
81:7,11 119:14	125:19 165:19	111:4,5,12	96:15 98:5
119:15 222:19	proceed 13:6	114:22 115:25	100:25 102:9
prior 28:18	proceeding	116:25 117:15	106:6 114:16
39:6,15 47:14	214:6	118:12,15,21	114:17 121:13
113:18 174:24	process 8:22	119:1,10,20	139:18 140:25
priority 103:11	31:15,18 93:18	124:11 138:3	154:17 168:10
228:22	112:24 207:17	138:13 139:1	183:21 187:12
proactive	processing	139:21,24	187:25 195:1
138:12 161:24	147:13	140:2,6,9,16	206:11 214:22
proactively	produce 125:4	141:18,22	215:19 218:20
162:6	produced 19:18	149:1 161:21	221:11 227:19
probable	125:9 167:9,25	177:8 180:12	233:17,23,24
181:12	168:5	181:14 183:23	234:17,20
probably 8:25	producing	184:5 205:9,23	244:4,5
12:7 19:10	88:17 164:24	207:4,17	product's
23:23 29:22	product 29:25	216:11 218:5	215:20
44:20 121:1	42:25 45:4	218:12 220:12	professional
135:20 145:9	49:23 50:7	221:2 224:15	73:1,4 86:14
160:20 194:6	55:10 56:6,20	226:4,8,15,24	95:7 181:5
201:18 208:21	57:19,19,20,22	227:4 236:5,15	221:20
210:12 233:9	58:10,11 59:19	237:3	professor 34:23
problem 19:20	60:1,19 61:4,22	production	35:4,16 36:1,19
36:2 56:20 59:5	62:14 63:9,12	42:22 158:4	36:21 37:4
59:25 60:4,18	64:11 65:2	207:17	163:3
61:18 65:15	76:18,19 78:6	products 1:5,6	project 20:9
99:6 103:2,23	78:17 81:16	3:19 6:15 14:20	29:15 44:12,15

[project - qualitatively]

Page 46

<p>44:18 58:12 projecting 224:11 promote 182:5 183:5 promotion 36:25 52:13 74:23 promptly 243:21 promulgated 140:5,24 144:2 proof 142:8 properly 77:22 proportion 124:10 proposed 135:11 proposition 81:4 184:7 229:11 prospective 70:10 194:17 protections 39:1 protective 132:15 protects 218:24 protocol 11:24 proven 56:21 65:4 175:11 provide 83:25 119:18 192:25 202:1 208:17 provided 32:11 192:23 193:2</p>	<p>207:19 243:14 provides 217:23 219:12 province 242:3 245:1,19 prudent 138:24 psychological 38:13 39:4 42:1 81:7 206:9 217:22 221:13 222:13,18 psychologist 39:20,25 40:20 67:4,17 psychology 31:24 37:23 39:13,22 40:4,5 40:7,9,11,11,14 40:16,18,19 41:25 42:7 81:12 118:4 206:7 218:10 219:11 221:16 231:23,24 232:1 public 41:3 56:9,17,19 58:7 79:12 117:17 154:25 155:1,6 156:19 162:13 183:3 204:6 218:3 220:8 233:20 243:19 245:22 publication 44:9 147:5,24</p>	<p>publications 147:2 150:7 publicly 75:6 78:9 113:15 171:20 186:3 publish 73:4 published 7:3 42:12,20 43:5,9 44:8 68:19 69:16 73:18,22 114:5 118:8,24 162:22 163:3 205:11,20 206:25 207:7 207:12,19 219:16 237:25 publishes 135:20 pull 11:21 12:1 34:11 111:12 122:15 131:9 131:20 226:24 pulled 69:18 209:13 pulling 111:4 purchase 39:13 61:22 62:20,25 63:2 91:10 206:11 220:17 purchasing 205:9 225:4 pure 118:9 120:10 205:4,5 purported 170:25</p>	<p>purporting 170:19 purpose 28:4 57:22 purposefully 90:17 purposes 56:24 72:24 167:4 put 11:20 12:7 12:10 19:3,18 51:15 52:4 98:16 103:14 110:11,20 111:11 122:23 145:8 147:22 158:13 159:4,8 159:11 161:11 163:13 170:4 172:1 174:22 186:21,25 201:25 202:3 202:23 208:11 213:24 puts 229:2 putting 160:18 puzzle 227:14 puzzling 88:23 91:11</p>
			<p>q</p>
			<p>qualified 141:5 qualify 213:12 qualitative 120:9 qualitatively 205:7</p>

[quality - ready]

Page 47

quality 164:19 quantitative 170:11 quantities 136:4 question 8:12 8:17 9:4,12,14 9:22,23 11:23 14:8 15:10 18:3 18:8 22:24 30:11 35:11 37:2 47:9 50:10 52:23 55:2 56:25 60:5 66:17 75:16 80:7 83:23 87:5 87:13 107:11 107:15 109:14 109:15 110:4 116:25 117:2,4 117:23 121:25 139:7 140:13 144:6,14 151:8 152:23 192:10 195:23 196:1 196:15 200:7 203:20 204:1 209:5 224:25 227:24,25 229:18 232:4 232:17 233:10 questionable 166:3 questions 10:1 11:17 18:11 116:19,20	137:17 146:21 190:5 194:23 238:16,17 241:6 quick 128:5 209:5 quickly 108:10 quite 99:12 118:15 138:19 161:8 quote 59:21 90:4 98:15 99:17 103:18 109:24 133:25 142:18 146:9 174:2 176:5 181:8 183:25 185:16 quoted 59:21 149:6 189:12 quotes 110:2 225:10 quoting 130:15 r r 2:1,14 187:21 rabin 80:24 81:3,5 218:1 raised 54:8 56:12 59:18 61:3,10 102:5 110:24 112:3 112:20 113:12 113:15,15 114:6 116:25 117:2,4 146:21	177:25 raising 116:18 176:16 185:14 ran 70:23 random 41:21 randomly 41:4 70:24 range 25:7 rank 35:16 rapidly 135:19 rasa 216:21 229:20 rate 30:24,25 31:1 rather 91:10 100:14 215:20 216:10,22 232:11 ratio 239:19 rational 81:10 218:6 rcp 1:25 reach 55:25 60:13 87:15 153:1 reached 30:19 162:10 read 22:3 26:1 26:3 46:22 52:23 59:3 68:15 70:25 71:2 78:11 96:20 100:2 105:9 121:3 126:3,10,10 128:21 132:24	149:5 150:8,9 166:4,5 167:5 167:12 169:7,8 171:12,13 182:7,18 187:4 187:18,21 188:1,6 191:7 191:18 195:17 195:18,24 196:8 198:6,8 199:9 216:13 217:8,11,12 223:3 226:10 226:20 232:4 232:11 239:24 240:6 243:3,4 245:5 reader 196:11 196:16 readily 228:14 reading 26:4 33:11 46:2 68:22,23 70:14 78:22 100:1 107:25 126:12 151:19 159:25 160:10 161:7 161:16 163:7 164:10 170:4 172:2 181:12 183:17 237:10 240:17 reads 69:14 162:9 184:1 ready 131:16 151:25
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[real - region]

Page 48

real 85:4 103:2 107:5 219:11 232:23 reality 176:11 196:21 218:8 227:10 realize 233:7 realized 209:12 really 9:3 12:3 45:8 46:14 55:13 62:3 65:20 76:10 77:16 87:15 94:25 95:1 104:9 107:7,11 141:5,7,22 147:20 151:12 151:15 152:9 155:8 157:1 167:15,21 176:7 192:1 196:9 197:19 206:14 214:24 218:25 221:13 230:1,4 231:4 234:4 realtime 242:10 reason 35:23 63:3 66:2,20 103:12 114:1 114:24 115:2 161:22,23 172:25 176:23 186:15,17 195:2 218:19 226:3 231:25	236:10,17 237:5 243:6,10 reasonable 25:8 86:13 181:5 221:20 reasonably 182:7 reasons 106:17 recall 24:3 29:21 30:24 46:4 48:23,25 49:15 54:10 72:11 107:25 108:3 122:6 163:1,2 195:5,6 200:10 239:3 240:2 receive 17:2 243:23 received 12:19 13:1,5,14,16 16:21 34:12 51:13 125:17 208:9 recent 10:23 68:18 69:15 recently 24:1 209:13 recess 80:4 185:2 235:1 241:15 recognize 78:19 143:4 recognizes 159:8	recollection 110:19 192:20 recommenda... 182:8 recommending 182:3 reconfirms 69:22 70:6,7 194:14 record 8:7 10:4 10:7,12 17:10 17:12,24 68:21 80:1 86:11,23 97:2 132:4 145:21 193:13 202:7,12 210:8 237:17 records 165:5 red 123:3 165:2 redirect 241:11 reduce 103:24 reduced 71:14 72:3,4 171:8 242:11 reference 11:24 62:23 77:8 81:24 97:23 111:24 121:16 121:19 122:6 154:13 162:21 172:15,21 182:24 211:10 212:10 214:1 237:23 241:3 referenced 30:15 77:9	104:14 182:9 references 48:11 51:7 124:24 158:1 referencing 240:24 referred 129:20 142:7 147:18 162:17 175:25 181:7 208:8 referring 18:18 21:1 56:22 70:22 97:1,12 130:14 131:3 133:9 178:1 179:1 180:1 182:15 193:25 194:8 220:22 234:19 refers 46:12,17 reflect 10:12 51:24 91:3 113:24 reflected 14:16 30:10 reflecting 208:10 refresh 110:18 159:9 refute 103:23 regarding 43:3 52:12 78:8 129:22 150:4 215:16 region 245:2
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[registers - report]

Page 49

registers 134:20 144:18 144:25	relationship 64:8 68:9 189:23 190:24 198:22	relying 23:14 28:14 48:19 71:24 80:19 81:3 197:3,5	88:21 89:8,19 89:20 90:17 91:16 92:16 93:20 94:20,22 94:24 95:12 96:17 99:1 100:25 102:8 114:13,23,23 117:15 118:21 121:13 148:25 172:5
regression 41:11,11	relationships 40:8 221:5	remains 17:19	replacing 59:5 111:5
regulation 138:14 144:1	relative 171:1,8	remember 22:3 46:6 47:2 72:13 75:19 158:11 161:6 163:7 179:22 195:12	reply 176:22 181:16 183:1 183:11
regulatory 23:8 49:18 50:11 115:17,20 116:5,6	release 156:21	rememering 168:7	report 5:11,13 10:22,23,24 11:17,19 12:8 14:7,10 19:8,14 21:2,17,22 22:1 22:13 23:4,13 23:19,22 24:10 30:3,10,15 33:23 34:4,9 36:9 49:12,14 51:5,9,14,16,19 51:25 52:3 55:13,13 58:23 64:7 67:24 68:1 72:22,24 91:14 98:16 116:4 129:3 133:25 134:8 139:8 142:18 146:10 148:10 149:7
reilly 3:20	released 88:11	remove 222:14	
reinforces 153:25	relevance 173:12,25	removed 154:3	
reject 74:15,17	relevant 16:13 17:5,5,8 31:23 74:23 75:8 81:24 107:15 113:25 185:23 192:1,8 193:8,9 206:14 207:12 234:4	repeat 8:11,12 8:17 15:8,10 16:6 105:25 138:19 228:4	
rejected 173:10	reliability 166:3	repeating 122:1	
rejecting 169:24	reliable 32:11 32:19 33:8 166:17 211:24	repercussions 99:3,15 101:1	
relate 43:10 76:7 77:3,5	reliance 108:5 121:15	rephrase 9:25	
related 16:9 43:7 44:24 75:11 76:6 79:15 92:11 113:20 121:17 121:20 122:11 156:18 233:22 242:13,16	relied 23:21 155:12,22 168:13 211:10 212:13	replace 57:24 82:14 83:7,7 85:15,24 88:5 91:22 92:25 93:3 94:22 111:12 114:16 114:17 154:4 184:7,11 227:5	
relates 14:25 49:19 201:10	rely 49:8 62:8 65:23 66:13 119:23 132:14 136:13 204:21 229:10	replaced 87:12	
relating 29:6 46:1 66:14 110:20,24 122:7 129:25 172:19 173:9 178:7		replacement 82:5,8,21 83:5 84:8 86:20,21	

[report - review]

Page 50

157:14 158:18 160:16 169:10 172:13 173:1,3 173:4 174:2 176:5 185:6,11 189:13 193:19 197:3 198:14 199:1,19 215:5 215:6 225:19 230:12 235:19 236:22 239:6 reported 1:25 55:15 72:6 148:4 reporter 9:6 15:7 50:22 121:3,22,25 127:12 128:3 138:18 163:15 163:23 232:4 232:10,15,18 242:1 reports 22:13 48:11,17,21,24 49:2,4,9 125:17 represent 223:13 representative 104:24 represents 98:4 reputation 211:23 request 158:21 169:22 172:23 192:24	requested 15:22 22:5,9 32:4 74:22 requesting 26:3 124:6 165:11 requests 84:2 require 169:5 169:23 243:22 requiring 173:9 research 16:1,4 16:16 29:13 42:5,6 45:25 46:22 62:10,11 62:18 63:7 64:5 65:25 66:19 67:5 94:12 106:23 114:17 147:8 148:13 148:22 154:23 156:16 162:6 166:20 180:20 206:3 207:19 224:23 225:11 237:6,8 researcher 162:9 researchers 146:20 resident 116:1 resource 34:24 resources 31:20 32:6,8 respect 42:14 72:18 77:25 79:19 189:18 228:9 233:16	respond 43:12 72:17 responded 161:19 responding 133:17 162:8 231:15 responds 124:5 response 43:19 83:14 96:15 99:22 110:5 111:1,18 112:2 112:7 121:18 121:19 122:11 128:20 142:6 164:10 165:9 173:19,21 responses 43:11 122:8 125:5 176:20 responsibility 117:21 responsible 150:2 responsive 110:10 111:15 111:16 restate 22:23 121:5 156:15 restricted 77:16,17 restroom 50:23 107:3 185:1 result 29:24 129:13 139:1 157:6 206:5	217:3 219:21 221:22 230:13 239:4 results 166:2,14 194:4 212:7 217:15 239:13 240:11 resume 17:13 80:5 128:16 185:3 235:2 237:18 241:16 retailers 32:3 88:13 retained 14:3 14:13 27:16,24 28:3,6,9,24 33:15 45:1,9,24 retainer 189:17 retention 18:12 28:11 retracted 150:6 150:24 return 243:21 revenue 58:20 review 6:3 14:9 14:15 16:20 20:14 26:1 31:4 31:16 49:3 52:11 53:11 55:17 58:16 59:16 80:12 123:9 128:23 129:17 130:4 130:23 145:15 145:23 146:2 146:13,19
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[review - role]

Page 51

158:10 162:23 191:5,12 208:12 209:1 213:16 214:2 214:20 233:17 233:22 reviewed 8:21 20:1 23:25 30:5 30:9,17 48:10 48:16 49:5,11 51:24 54:12 56:11 75:7 76:14 77:2,10 80:8,21 83:16 89:16 107:19 107:19 113:18 118:24 134:4 146:9 151:18 157:16 158:22 179:4 182:21 190:21 191:1 191:11 198:19 200:12 205:21 211:7 220:6 224:24 reviewer 166:21 reviewing 17:1 19:1 21:20 32:15 48:23 60:12 159:22 163:2 166:13 188:12 revisiting 26:2 ribbon 123:3 165:2	right 13:21 15:4 16:22 17:15,17 18:10 18:22 22:7 24:1 24:2,7,20 25:10 30:6,12,13 34:4 34:5 35:20,22 36:17,22,23 44:2 51:1 52:5 64:23 66:11 67:10,17 74:25 75:1,9 80:3 87:17 94:6 95:22 96:21,24 97:3,17 98:8 103:25 104:4 106:7 107:20 110:7 111:22 112:25 118:15 120:15 122:22 123:8 127:11 127:16 128:18 129:15 130:8 133:24 134:1,3 134:24 137:7 137:10,23,25 138:9,16 140:2 141:1,15 142:5 142:9 143:15 143:20,21,22 147:21 149:9 150:22,24 156:5 157:22 158:20 159:2,6 159:9 160:6 163:9 167:14	168:2 169:15 172:2,4,19 173:21 175:19 176:1,20 178:9 178:22,25 179:2 180:13 181:18 183:1,4 183:16 184:17 190:6 193:12 194:10 198:14 198:24 200:5 202:24 205:24 208:1 210:11 217:16 218:17 224:13,18 226:20 230:19 231:3 238:8 241:13 243:4 ringing 124:12 risk 7:5 33:7 43:8 53:12,17 53:20 54:8,16 54:16 55:9 60:1 60:4,15,16,18 60:21,23 61:2,6 61:12 62:8,14 66:7,14 69:21 75:12 85:17 87:16 89:6 95:10 100:5 101:7,9,16 102:3,17 105:19 108:2 117:20 119:1 120:13 142:9 170:11 171:1,8	179:6,23 180:1 180:11 181:6 181:16 182:10 185:21 190:19 194:24,25 195:9 203:1,2 203:11 205:23 207:4 220:25 221:5,5 234:12 238:2 240:25 risks 32:16 42:14,17,19 43:4 45:6 50:3 50:6 52:21 53:10 54:12 55:4,12,16,19 56:6,9,12 57:14 57:23 58:5 59:7 59:12,18 60:7 62:4 64:10 65:5 68:5 77:3 78:6 79:1 82:23 85:23 90:18,19 95:4 96:13 117:9,13 121:11 139:10 142:13 177:10 206:20 207:8 rls 1:7 rmh 3:24 road 50:19 rodeo 20:25 role 35:17 39:6 81:13 220:9 221:1
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[room - scientist]

Page 52

room 10:13 107:23 rooted 215:23 rotman 34:25 37:5 rough 29:16 roughly 13:19 28:1 rubino 153:18 163:3 rudie 2:14 26:12 rudiesoileau 2:17 rules 206:8 243:22 run 103:15 123:13 197:14	safety 6:4,10 61:4 96:16 98:22 99:14,16 99:19,20 100:15 103:10 105:1 110:24 116:25 130:24 137:24 139:18 139:20 145:24 146:3 153:11 163:21 172:7 216:19 217:2 217:13 225:9 226:7,15 227:3 228:21,22 234:16,20 236:5,23 sage 49:7 sage's 49:9,12 sale 16:14 29:12 52:13 74:23 sales 1:6 18:14 236:6 244:5 samples 125:1 135:12 sampling 191:1 sanitary 170:22 satisfactory 135:17 saw 48:10 80:9 121:15 157:14 172:21 213:25 saying 58:18 60:22 65:1 66:7 70:1 79:11,13	80:17 91:9,18 100:2 103:10 104:2 115:24 117:18 120:9 120:12,23 121:23 134:8,9 134:11 136:24 140:13 144:23 150:12 152:22 153:20 156:10 164:12 167:17 169:15,19 173:9,11 174:20 176:4 179:11,17 183:21 188:21 189:1,20 190:2 192:18 197:7,9 198:4 204:8 225:18 230:21 231:14 236:18 237:4 says 81:9 83:10 99:17 100:3 103:4,4,19,25 109:22,23 116:2 124:4 129:8,15,16 135:5 139:19 142:20 143:16 143:20 144:6,7 167:7,23 168:2 168:23 173:7 183:2,4 184:9 194:10 196:5 198:8 203:4,9	203:22 213:10 218:12 228:19 240:9 scale 71:12 72:8 205:8 229:1,3 scene 97:14 scenes 190:4 227:1 schildkraut 239:12 240:10 scholar 15:21 46:24 75:14,18 75:24 78:22 school 34:25 36:20 37:11 119:12 149:14 science 32:22 56:11 78:18 166:23 167:16 175:5,5,8,10 204:20 sciences 149:13 170:12 scientific 31:21 33:1,5,7 73:16 75:7 78:10,20 116:24 125:23 147:23 165:23 177:19 191:3 207:1 211:24 scientifically 56:21 61:12 65:4 152:16,24 scientist 32:24 32:25 33:11,21 33:24 157:4,7
s			
s 2:1 sacred 215:23 safe 6:20,22 56:20,21 61:18 65:2,2,4,14 117:24 135:16 154:17 155:3 204:12 211:2 211:23 212:20 212:25 213:3 218:12 219:8,8 safecosmetic... 6:21 210:4 211:1 212:18 212:21			

[scientist - several]

Page 53

162:9 166:15 scientists 47:19 155:2,4 156:25 157:10 scope 79:10 168:15,17 232:24 screen 11:20 12:1,7,10 19:19 51:15 52:4 126:15 159:19 163:13 193:13 200:10,18 202:23 204:2 scroll 20:13 143:24 188:2 199:8 240:23 se 236:2 search 75:17,19 186:16 194:5 212:6,9 searched 15:18 75:14 191:22 searches 191:23 searching 192:14 second 20:16 22:25 24:19 42:16 103:18 109:3 149:10 160:3 168:20 172:18 184:20 200:16 202:14 217:11 232:15 232:19 241:5	secondhand 32:3 section 98:24 178:15,21 191:15 195:20 238:19 sections 178:13 see 12:9 13:5 19:20 20:2,18 27:22 34:13 41:7 89:19 98:13,23 101:4 101:23,23 104:4,25 105:11 110:2 110:16 113:23 121:18 122:25 123:23 126:17 128:12 129:8 134:25 143:1,7 143:11 146:13 146:16 152:5 158:13 162:21 163:14 165:13 169:9 180:7 186:23 194:9 202:24 203:3,9 203:13 211:4 213:12,17,18 220:23 237:6 238:22 240:24 241:2,4,10 seeing 19:20 79:10 158:1,11 200:10	seem 78:2 88:11 148:17 152:2 153:13 seems 8:20,25 103:15 141:14 152:9 156:22 176:9 180:10 234:9 seen 121:21 124:13,14 126:7,11,13 171:14,15 200:5 201:8,9 201:16,20 202:12 segment 215:2 217:11 selikoff 149:3 149:12 150:23 sell 84:9 89:2 selling 89:6 99:8 174:21 180:17 semester 37:13 send 83:10 87:1 sense 9:7,13,24 25:8 52:2 70:18 70:20 138:14 140:7 183:12 192:11 193:16 208:24 228:11 232:8 233:3 234:17 sent 12:20 25:16 178:12 208:21,22	210:9,22 sentence 52:9 53:9 71:13 91:1 143:14,15 144:16 151:21 167:6 169:18 179:21 180:8 196:13,14,15 203:3 223:3 sentences 70:21 182:7 189:13 separate 11:8 191:14 september 6:16 109:3 187:13 187:23 241:2 serious 58:4 seriously 83:2 83:14,19,22 93:16 95:19 96:3 116:2 117:14 118:20 118:20 121:12 148:18 176:10 234:13 serve 166:21 service 115:24 services 165:3 170:10 set 112:8 122:17 128:25 178:11 188:10 setting 97:14 167:15 several 104:24 105:12 125:17
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[several - sorry]

Page 54

<p>146:21 171:5 severe 176:19 shake 175:1 shape 46:12,17 133:16 137:9 140:25 share 86:1 193:12 sheet 243:7,10 243:11,16,21 244:1 shift 113:25 236:7 shifting 140:14 237:11 shifts 136:16 short 95:14 175:17 shorthand 242:9 shortly 14:4 show 56:15 57:21 65:19 86:19 108:17 122:18 126:18 170:20,25 210:18 showed 24:13 164:18 shower 16:11 16:11 74:24,24 showing 171:8 202:7 shows 62:18 86:5 117:13 237:9</p>	<p>shred 118:13 206:17 shut 148:23 sic 174:14 side 82:16,16 84:13,13 91:21 91:21,22,23 175:7 sides 205:8 240:25 sign 243:11,13 243:17 signals 85:19 signature 242:23 243:20 signed 28:20 165:8 significant 69:20 112:20 113:4,12,14 114:1 115:10 124:21,25 125:10,16 171:9 185:21 190:24 198:21 significantly 171:1 signifies 35:16 signing 243:15 similar 29:8 38:6 41:5 51:21 67:14 99:4 102:1 205:13 simply 184:7 189:4 215:18</p>	<p>simulate 211:12 sinai 146:24 148:11 149:14 149:17 single 101:20 149:21 171:25 singling 169:17 sir 135:3 203:12 sit 47:3 234:23 site 6:21,23 192:3 212:17 212:21 213:3 sitting 209:6 situate 148:15 situated 115:11 six 44:20 sixties 100:22 size 72:13 124:9 skewed 224:7 skin 185:19 skus 41:13 slate 229:21 slide 63:7 slides 147:16 slight 14:22 47:16 70:13 71:4,6 194:19 195:3 slightly 71:13 slow 70:1 small 10:20 smart 121:1 219:1</p>	<p>smith 5:15 97:6 smoke 227:8 smoothness 216:9 social 40:7,9,18 society 6:18 200:6 201:2,4 201:10 203:15 sociology 37:23 soda 67:11 software 42:3 soileau 2:14 26:12 sold 82:16 84:13 solely 79:19 137:22 solution 152:10 153:22 solutions 147:13 somebodies 85:22 somebody 67:4 67:5 78:16 80:15 85:21 162:2 176:8 186:6 189:18 199:10 212:6,7 sophisticated 135:10 sorry 8:16 15:7 26:25 39:1 54:1 54:22 64:17 68:20,20 70:3 72:3 76:12</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[sorry - statements]

Page 55

77:17 84:23 90:22 93:23 107:16 109:13 120:23 121:22 131:12 138:18 144:16 155:20 159:22,24 163:15 166:12 182:16 188:3 188:20 189:8 194:13 200:19 209:6 228:3 241:3 sort 33:2 191:22 sorts 38:10 sought 33:20 sound 25:10 80:10 sounds 8:14 9:8 9:16 17:22 source 47:5 58:20 86:7 sources 32:1 46:7 56:12 191:20 space 199:16 243:14 spalding 3:3 spanning 29:22 speak 71:19 118:4 141:5 163:6 209:25 230:7 234:21 236:21	speaker 105:3 speaking 23:7 152:13 204:14 204:15 217:20 speaks 81:23 special 183:8 specific 16:6 18:9 23:12 33:25 38:22 50:1,4 54:17 57:18 63:18 72:18 84:3,20 86:5 114:9 148:9,14 194:22 220:4 221:18 specifically 14:25 40:17 43:4 46:1 68:2 76:20 92:10 167:23 175:21 207:8,13 221:3 222:21 224:15 224:20 231:15 specificity 46:15 214:7 specifics 14:1 19:13 26:7 27:21 155:17 156:3 161:17 speculate 172:10 speed 238:9 spending 148:24	spent 24:24 25:22 117:14 spilled 41:3 spoke 14:4,17 14:23 spoken 33:16 sponsor 154:23 162:5 sponsored 153:13 203:23 spontaneously 181:17 spreading 226:22 spring 118:9,10 120:8,10,10 121:7 205:5,5 spur 60:25 st 2:15 3:15 stammering 233:9 stand 191:9 199:3 standard 115:18 135:20 136:15,18 137:5 138:7,25 140:5 standards 140:14 141:20 standpoint 87:23 88:25 start 19:8,17 20:8 52:6 78:22 170:3 193:15 208:15 214:24	started 17:25 18:11 20:9,11 30:2 74:8 123:11 starting 16:3 21:9 74:6 132:3 142:25 172:17 222:4 starts 67:10 99:11 109:13 131:6 146:18 202:24 203:11 238:23 stasis 173:14 state 124:16 168:21 181:4 190:12 199:18 204:20 215:9 224:19 225:23 stated 18:16 142:4 168:8 175:9 217:19 226:3 statement 18:9 33:7 61:25 65:7 98:18 124:8 165:13 166:7 168:16 189:6 204:13 206:23 220:4 226:2,13 226:21 statements 56:23 66:14 74:20 150:3,5 185:9 201:9 204:6 205:1,2,2
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[statements - subsequent]

Page 56

206:4 207:16 211:24 214:16 220:14 233:5 states 1:1 52:10 118:24 132:12 225:22 238:25 stating 165:18 stationed 149:16 statistical 69:23 70:8,13,16,17 71:5,6 194:14 194:20 195:3 196:20 222:9 statistically 69:20 171:4 190:23 198:21 statistics 33:2 status 6:3 130:23 145:15 145:23 146:3 steadfastly 175:9 steering 2:3 steinberg 103:25 105:3 106:2 steinberg's 105:16 stemming 149:25 stenographic 10:11 step 37:1 64:7 235:4	stop 50:19 99:8 100:3 126:2 177:11 store 41:13 story 58:6,21 227:1 strategic 183:4 strategically 216:24 strategies 43:15 100:24 strategize 162:11 strategy 38:13 38:18 58:24 63:18 64:2 78:1 78:15 81:23 84:9,17 86:9,20 86:21 87:22 88:21,22 89:17 90:3 92:24 102:10 114:21 133:11 151:17 152:12,17 162:5 180:23 184:4 215:17 218:21 219:1 234:8 stratified 239:12 stratifying 240:10 streams 79:15 street 1:12 2:7 2:22	stretch 174:13 stripping 43:16 strong 39:9 101:4 199:6 strongly 171:7 239:18 structural 104:16 students 38:24 44:11,13,19 studies 6:10,17 15:22 31:23 43:6,6 44:3 69:19 70:11,12 71:4,5 78:23 91:6 93:24 153:11,18 154:14,16 155:12,22 160:9 162:25 163:1,21 174:14 190:18 190:22 193:22 193:23 194:1,3 194:5,7,10,17 194:19,21,21 195:10,20,21 197:8 198:6,9 198:19 199:6 199:17,18,20 200:21,22 205:12 219:16 219:17 220:6 220:10 222:9 239:2 240:4,10	study 37:20 40:6 62:23 68:7 68:11,19 69:15 69:22 70:6,7,23 71:8,25 112:17 112:19 113:4 113:12,21 114:5 115:9 120:15 157:5,5 162:17,21 163:3,8 170:16 170:19,24 171:7,10,17,21 171:25 196:6 197:1,14,24 205:11 222:7 222:14,20 237:6 239:9 stuff 29:13 103:3 133:3,14 133:15 144:18 144:19 231:6 sub 136:4 139:8 subject 5:16 97:7,16 132:6 243:15 submits 173:6,8 submitted 23:19 44:9 51:25 165:10 193:19 subscribed 245:16 subsequent 147:4 150:6 223:16
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[substance - talc]

Page 57

substance 60:25 243:5,8	162:12 203:6 203:16 204:7,8	suspicion 199:7	225:18 233:9
substantiate 124:24	204:14 207:20 219:18 220:4	sustainability 42:23	233:11,14 234:24 236:2
substantiation 6:4 145:24 146:3	supporting 239:10	swing 122:25	236:12 239:25
substantive 215:6	supposedly 83:21	sworn 8:2 242:8 245:16	taken 1:11 69:4 69:5 80:4
substitute 181:19	sure 9:4,5,25 10:19 11:23	synonymous 225:8 228:20	114:21 128:15 151:7 185:2
subtext 138:4	12:15,19,24 13:2,14 15:16	system 130:22 157:17	227:16 228:6,6 235:1 241:15
successful 63:19	16:8 17:23 21:6 23:2 25:15,20	systematic 72:25 74:4	242:5,9,15
suddenly 138:2	34:5 39:2 40:3 42:9,20 57:4	t	talc 5:17,21 6:4 6:10,17,22
sue 241:1	61:7 68:12 82:7 96:8 105:22	tab 145:9 194:2	14:25 15:1,19 28:12,22 29:7
suggest 196:18 222:10 226:19 236:19 237:12	106:2 108:12 108:15 110:12	table 5:12 10:24 51:13,17 51:18,23 192:13 209:7 222:17	29:10 33:8 45:2 45:7 47:22 48:2 49:19 53:18,20 56:6,25 57:1,6 57:16 58:10
suggested 60:17 71:15,17 182:21	111:25 121:2 123:1 127:7,17	tabula 216:20 229:20	59:13 60:8 66:8 66:15 68:4,13 69:7,22 75:12
suggesting 100:13 175:4,7 179:18 197:22	131:11 134:6 135:11 137:20	take 9:10,15 11:4 42:10 50:16,16 70:1 79:7 80:2 96:2	76:9,21 77:4 82:11,14,21,22 83:20 84:21,22 84:22 85:15
suggestions 89:22	145:13 157:20 159:12 160:2	100:24 108:18 112:12 116:1 117:6,19	87:11 88:5 89:2 89:7,9 90:4,12 91:21 92:12,17
suggests 95:13	165:1 179:18 179:25 188:24	118:20 127:5 128:4,19 133:11 152:16	93:20 94:1,5 95:5,9 96:19 97:7,17 98:19
suite 2:8 3:22	190:9 220:5,23 224:17 233:16	160:1 162:4 167:4 172:8 184:23,24,25	99:7,8,20,23,24 100:5,7,17,24 101:15 106:5
suited 125:24 165:24	238:6 241:12	201:17 214:14	
sum 101:22	surveillance 164:16		
summarize 153:9 220:9	suspect 147:16		
support 67:20 73:23 95:17			

[talc - talks]

Page 58

111:7,10,21	186:7 188:14	195:16 198:22	232:6,6
112:21,22	190:7,14,17	211:14,14	talking 17:24
113:16,19	191:12 192:3	212:25 213:15	18:1 19:6 21:1
114:7,15 116:7	192:15 193:17	244:3	39:20 53:8,24
121:20 122:11	195:20,25	talk 11:19 14:8	54:3,15 55:19
124:7,10,18,20	198:17 200:7	39:3 52:2 59:17	55:20 57:14
125:1,4,8,15,20	200:21,23	63:20 65:21	58:9 63:7 75:8
126:1 129:12	201:11 203:8	74:22 75:2	75:15 76:17
129:14,19,22	203:18 211:3	76:19 84:19	81:14 84:3
129:23 130:23	212:19,25	87:21 103:17	104:19 107:13
132:7,10	213:2 214:11	112:16 118:9	111:7,19,23,25
135:15,22,23	215:16 216:19	119:4,7 123:10	114:8 118:5
136:1,2,21	217:5 219:24	131:1,2,24	120:14 121:7
137:8 138:8	221:24 223:5	136:20 139:25	133:12,16
139:18 140:1,2	223:15 224:1	140:1 145:3	142:1,17 152:8
140:25 142:7	224:15,21	151:16 152:1	153:18 156:18
142:16 144:3	226:1 227:19	156:3,23	157:1 164:9
145:15,23	228:10 229:12	161:17 166:14	165:4,16
146:3,21 147:3	229:14 230:15	173:5 184:21	175:21 177:2
147:13,15	233:17,23,24	185:8 190:6	178:4 179:6
149:24 150:15	239:11 240:3	193:22 206:13	180:11,11
152:16 153:11	240:12,13,21	206:22 210:25	181:1,7,13,17
154:3 162:17	talcs 135:24	210:25 223:24	181:20,24
163:4,21	talcum 1:4	talked 15:14	183:13 184:9
164:11 165:12	14:20 15:1	18:6 26:5 40:18	193:14 203:10
165:20 166:1	16:10 29:10	41:24 59:10	209:9 217:10
167:9,25 168:4	52:14,22 53:4	67:8 71:8 83:1	218:4,18 221:8
168:9 169:3,6	53:10 55:16	97:15 101:21	221:17 222:7
169:16,25	57:24,24 58:23	106:18 117:10	224:10,12
170:10,15,20	62:25 63:1,3	130:5 140:21	225:16 227:11
171:3 172:5,19	71:7 75:20 78:8	152:2 155:10	227:13 232:9
173:10 175:10	82:4 94:17	177:24 179:23	234:1 236:9
176:11 180:17	96:14 100:4	184:17 196:7	talks 68:14
181:3,3 182:1,2	150:5 151:24	202:16 204:10	125:12 130:9
183:13 184:5,7	170:21 179:6	205:4,19	142:19 143:25
184:11 185:18	190:19,25	219:14 230:12	194:12 202:25

[talks - think]

Page 59

203:2 211:3 target 215:21 targeted 235:24 targeting 235:13 236:2 236:14,14 task 18:16 taste 39:10 67:12 217:25 taught 37:15 38:1,4,5,6,14 218:10 teach 37:14 38:24 teaching 37:6 119:5 team 209:25 teams 37:21 technical 192:5 198:7 techniques 135:10 147:10 147:25 technology 17:18 tel 2:11,18,25 3:8,16,25 tell 10:17 28:25 61:14 68:23 101:17 120:5 126:14 142:5 154:24 180:15 220:21 227:23 228:2 238:10 telling 13:12 65:13 66:20	74:12 103:9 116:11,14 141:15,17 156:5 167:19 174:7 182:6 186:1 204:6 206:5 219:8,9 229:8 tells 226:25 ten 101:25 tenovus 146:23 147:18,24 tenure 35:6,9 35:18,18,21 36:10,13 37:3 tenured 35:4 term 40:1 83:1 229:20 termed 197:2 terminology 73:10 149:25 terms 39:4 55:12 56:23 75:20 174:24 234:2 terrible 195:14 test 39:10 71:17 82:6 83:5 91:7 94:17 166:16 218:1 tested 57:20 testified 8:5 205:20 testifying 80:15 testimony 27:11 31:9	59:15 60:10 64:11,14,20,25 75:5 80:9,13,18 80:21 86:16 87:19 102:19 104:6,19 105:21 107:19 107:25 119:22 153:6 154:19 173:14 183:24 184:1 198:1 199:1 207:22 227:21 242:7,8 243:14 245:10 testing 41:2 61:16 77:19,19 77:20 94:13 136:12 148:22 151:10 166:14 177:6 192:4 tests 67:20,25 text 131:21 196:6 tfinken 3:17 thank 10:2 11:13 13:8 17:15 42:8 70:4 108:23 109:5 112:13 122:3 123:21 127:16 145:18 159:13 163:23,25 186:14 187:20 196:3 208:4,5 232:21 234:25 238:15 241:13	241:18 that'd 210:19 theories 19:2 theory 181:20 thereto 242:17 thing 33:2 45:23 88:22 99:4 101:7 141:19 175:20 187:3 188:7 190:3 220:12 222:12 things 9:2 17:5 22:11 23:19 39:8,11 42:22 42:24 44:16 51:24 58:18,19 60:4 71:20 76:23 78:23 79:10 91:5 93:12 116:1 119:11 120:16 140:15 141:6 154:1 160:7 176:7 191:25 212:11,12 222:6 224:6 229:3 230:2 234:18 think 8:9 10:11 11:15 12:6 13:4 14:22 17:17 22:6 23:9 24:7 25:11 27:2 41:2 42:16 43:5 47:15 55:21
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[think - totally]

Page 60

58:3,15,21	204:10 218:2	72:16 84:3,15	28:16 31:5,8
59:23 60:11	218:15 219:11	87:12 92:5 93:8	33:16 45:25
62:2 64:25 65:1	221:14 222:22	93:11 95:20	47:4 55:8 68:6
65:16 67:12,13	224:2 227:9	100:16,20	196:19 228:12
69:9 70:19 74:4	229:4 230:9	102:11 104:25	232:1 234:5,15
81:12,22 83:23	232:5 234:4	108:18 114:9	today's 26:14
83:25 85:8,15	238:11,15	123:8 125:19	todd 175:22
85:16 87:23	thinking 26:25	130:8 148:25	177:13,13
88:20 89:15	40:6 94:7 105:4	157:13 160:1	178:20 181:6
90:5,16 91:3,23	106:3 148:25	164:22 168:25	183:20,20
91:25 93:15	184:2 223:22	172:1,4 174:8	184:13
94:23,25 95:10	227:15	174:13 176:18	together 37:21
95:17 96:1,25	thought 60:17	179:5 190:1	160:18 209:25
98:21 103:7	106:13 156:14	193:16 197:16	told 58:7 61:13
104:10,23	197:18 223:1	222:2 224:25	174:22
107:7 112:6	thousands	229:25 234:13	took 68:12 87:8
114:8 115:10	191:17 223:14	237:2	93:15 164:20
117:11,20	threat 93:14	timeline 19:7	top 77:8,13
118:17 120:19	threaten 101:9	98:17 114:2	85:19 98:12
130:8,19 132:4	three 10:24	173:16 234:1	151:8 166:22
137:12 138:4	11:8 69:10	timelines 79:14	225:6
139:19 141:3	128:11,13	times 26:13	topic 16:1 31:3
151:14 152:10	171:17 178:10	142:4 150:3,7	39:5 237:15
152:11,15	178:11	150:13 181:15	239:3
153:25 155:5	threshold 72:13	209:8	topics 38:11
157:14 158:10	thrust 135:7	timing 78:7	50:14
159:14,17	thumb 229:2	239:11 240:11	toronto 1:12
160:6,17,20	tied 99:23	tips 229:3	10:9 35:1,4,7
161:10,14	time 8:10 9:10	tired 233:8	35:21,25 36:5
163:7 175:1	11:21 14:4	tisi 2:6	37:9,25 38:2
176:6,14	17:20 18:3,24	tissue 147:4	160:23 245:2
180:18 181:11	19:4,5 21:9	title 36:19	totality 71:22
183:10 187:4	22:15 24:19	titled 145:23	79:5 101:21
193:24 194:5	25:23 30:25	today 10:8	104:19
197:6,13 200:2	33:14 34:2	24:25 25:24	totally 12:3
201:7 203:25	44:17 45:5 67:7	26:8 27:18	

[touch - uncorrected]

Page 61

<p>touch 177:22 179:11 towards 91:16 toxicological 125:5 170:12 trabert 239:8 trace 136:4 track 35:6,9,21 36:10 40:12 tracking 42:3 tracy 3:14 trained 32:24 training 32:21 40:5 78:20 117:25 118:2 119:13 transcript 245:6,10 translocation 112:24 174:18 189:4 transparent 238:13 treat 205:1,7 206:15,16 treating 58:4 60:15 treatment 199:5 tremolite 136:1 136:4,17 trend 237:1 trends 202:25 trial 9:19 31:5 31:9</p>	<p>tried 79:7 236:7 tripped 54:22 trouble 139:6 true 65:11 67:14,14 73:3 155:3 156:10 175:22 176:4 176:25 177:13 177:13 178:1 178:20 179:10 181:6 183:6,20 183:21 195:5 206:18 221:10 222:2 223:2 245:9 true's 179:17 184:13 trust 61:19,21 61:21,23 62:14 62:19 63:5,8,8 63:15 64:5,8 65:1,7 66:3,4 66:21,24,25 71:11 94:4 103:11,13 116:15,15 120:18 196:22 215:23 216:10 216:11,12,16 218:13,19,25 219:9 220:9,11 220:15,16 221:1,4,12,14 224:13,20 225:6,14 236:20 237:9</p>	<p>237:13 trusted 71:14 72:5 116:16 trusting 72:7 trustworthiness 231:22 trustworthy 63:4 65:12 216:25 225:8 228:20 truth 199:12 try 8:12 9:3,5 46:25 58:20 108:10 120:2 131:9 159:17 195:11 trying 36:3 37:2,23 38:16 39:11,14 42:16 46:8,22 58:22 70:24 79:13,16 114:2 117:14 138:11 142:2 142:15 187:19 193:24 208:23 210:17 211:12 211:20 212:5 213:5 230:4 tucked 196:10 turn 146:12,14 185:5 turns 102:3 tweaking 43:19 twelve 184:22 twenty 202:21</p>	<p>twice 63:2 two 20:1 24:13 36:2 41:4 72:10 77:9 84:13 94:3 101:4 126:17 128:21 145:10 145:11 158:5 159:6 176:4 185:10,14 187:7 188:12 202:21 type 29:13 81:18 100:14 132:20 142:23 143:9 181:1 typed 212:7 types 38:3 40:1 40:19 78:1,24 86:3 102:2 134:16 137:13 219:16 typewritten 10:25 typically 38:19 40:3 typo 187:16</p>
			<p>u</p>
			<p>u.s. 226:2 ultimately 85:21 109:16 162:22 174:3 175:11 unable 121:25 uncorrected 171:5</p>

[undated - vantage]

Page 62

undated 21:9 under 9:18 27:1 178:16,21 189:17 194:1 203:1,10 242:12 245:4 underlying 206:7,9 undersigned 245:4 understand 9:17,20 10:1,15 18:3 23:11 26:2 28:18 30:11 32:25 33:1,5,17 37:24 38:16,19 38:25 39:11,15 41:12 46:11 50:9 53:17 54:16,18 64:4,6 66:4 71:21 76:1 79:9,13 87:10 96:1 105:22 107:15 114:2 137:16 141:25 142:2,16 144:16 152:19 156:9 169:21 192:23 205:1 205:14,16 207:6 209:14 211:13 212:5 213:6 215:1 221:10 230:4 understanding 19:2 20:24 21:4	22:10 30:20 33:4 43:23 46:10,17,19 47:13,17 51:20 54:5,7,21 55:1 55:5,6,7,11,18 66:17 72:16 76:24 106:12 113:16 129:19 129:21,25 140:22 141:23 142:6 152:12 152:18 153:3 154:20,22 173:16 177:16 179:3 185:12 189:14 197:16 211:22 212:10 213:19,24 214:4,9 215:13 217:22 219:12 229:25 240:14 240:16,20 understands 137:19 144:9 211:16 understood 27:17 59:24 97:21 173:24 underway 153:12 unequivocal 217:4,15 219:23 221:23 223:4 230:14	unfortunately 121:24 unintentionally 54:25 united 1:1 universally 191:3 university 34:25 35:4,7,12 35:21,24 36:5 160:23 unquote 90:4 unreasonable 161:15 unsafe 176:11 update 6:5 145:24 146:4 updated 5:9 34:15 80:9 uploaded 123:2 upper 34:19 urban 190:15 use 7:4 40:20 45:6 60:8 69:22 71:7 72:24 75:8 76:9 82:24 94:16 95:11 96:14 113:16 136:17 139:9 156:24 170:20 171:3 176:12 182:2,4,9 184:25 190:25 194:25 195:16 198:22 206:10 223:15 236:13	238:1 239:16 used 45:20,21 71:10 107:3 154:17 166:17 167:18 169:16 169:16 170:21 181:22 183:22 196:6 212:4 213:5 229:20 usefulness 132:21 133:5 143:17 users 69:24 70:9 190:20 194:16 uses 135:23 138:8 181:14 using 29:17 32:6 41:11 42:2 42:3,7 43:18 47:5 65:3 69:17 100:4 136:18 137:4 141:16 149:25 159:2 213:15 222:21 239:6 242:9 usually 46:24
v			
vacuum 65:9 vague 54:24 valid 152:24 value 217:21 219:11 vantage 38:15			

[variables - wellbeing]

Page 63

variables 41:7	voice 232:14	211:12 239:25	224:3,7 234:5,7
variant 182:1	volume 108:21	wants 184:14	238:18
182:22,24	w	warn 50:2	wayne 94:13
varied 87:1	w 187:18	109:16	ways 38:25
variety 32:1	wade 191:23	warned 180:2	we've 79:22
40:24 46:7	wait 90:21,21	warning 49:23	93:2 114:13
203:3	walk 235:21	110:4,19 111:4	127:25 161:19
various 42:23	walking 230:11	111:11 124:8	162:10 178:4
56:11 78:1 88:8	wallet 104:9	165:12 169:5	184:21 204:10
116:5,6	walmart 62:25	169:23 173:9	webpage
varying 135:25	want 9:25 12:1	washington 2:9	212:18,24
venture 25:2	13:1,25 14:10	watch 212:16	website 32:2
verbatim 11:2	25:4,6 27:20	watch's 213:20	68:13 69:6 71:2
62:16 71:1	50:16 51:1 52:6	water 118:9,10	190:16 193:16
verified 156:6	56:24 104:22	120:8,10,10	199:16 208:10
versed 134:14	126:18,22,23	121:7 205:5,6	208:11 210:4
version 72:3,4	128:4 137:18	way 12:24 34:6	211:1 213:7
193:15	145:3 147:22	41:2,6 48:19	224:1
versus 62:25	151:12 156:3	50:10 70:15	websites 12:23
67:9 118:9	160:2 161:17	74:13 82:12	158:7 208:16
168:16 186:1	163:16 167:3	85:5 100:12	209:10 211:11
205:5 218:1	170:15 174:10	102:25 116:16	211:17 212:9
239:14	184:23 188:2,6	120:12 126:16	219:6
viable 61:12	199:14 201:17	133:12 137:4,8	weekly 166:21
94:24 95:2,3,3	206:11 208:20	139:6 147:22	wehner 6:13
view 33:6 81:18	208:24 209:1	148:22 149:5	185:9,13 186:5
94:15 103:15	209:14 210:24	150:21 156:6	187:11,17
133:7 228:9	212:15 215:5	160:21 161:3	188:14
viewpoint	221:12 222:16	166:10 182:9	weigh 207:14
175:14	232:16,23	182:19 183:12	weighing 93:6
views 227:18	233:10 238:12	188:24 189:21	weight 63:9
229:14	wanted 12:18	191:24 196:20	203:5,16 204:7
virtually 45:3	12:24 16:18,19	197:10,19,22	204:13 218:15
vocal 146:22	22:1 79:9 105:5	204:19 211:16	weiss 3:13
149:15	209:17 210:13	213:25 217:23	wellbeing 217:3
		220:4 223:22	

[went - x]

Page 64

went 17:23 61:8 94:6 191:13 211:13 219:5 werner 187:17 west 1:12 whatsoever 61:18 65:15 189:3,23 212:2 213:22 white 88:2,4 105:6 widely 135:25 wife 36:1 william 48:12 willingness 118:12 win 92:6 180:10 window 10:19 windsor 5:21 132:7,9 wire 123:3 wise 17:18 wish 108:17 withdraw 32:7 55:2 withdrawn 138:23 witness 4:2 8:2 8:4 15:9 20:6 21:15 22:23 32:21 34:16 45:17 48:15 50:19,25 51:10 51:20 57:11 58:15 59:16	60:11 63:17 64:16 70:3,5 73:9 77:15 81:22 86:17 87:20 89:14 91:2 92:3 97:9 101:19 102:20 104:7,21 105:24 107:2 110:8 113:7 115:4,13 116:10 123:6 128:6 131:17 131:19 134:13 137:2 139:5 140:11 141:3 143:4 144:13 144:15 148:8 150:17 151:2 152:22 153:7 154:10,20 155:16 156:1 156:14 157:9 159:14 164:4,6 166:9 170:2 171:24 173:15 174:5 175:16 177:21 178:18 180:6 182:18 187:2 188:1,8 188:20 196:4 198:2 199:2,25 202:10,18,21 203:24 204:24 206:1 207:6,23 212:2 213:4	214:19 223:21 224:23 229:16 230:25 231:13 235:10 236:25 238:3 240:6,16 242:6,9 243:1 243:18,18,20 244:8 women 174:22 176:24 177:4 183:8 195:10 195:15 239:15 239:21 241:1 word 15:8 77:23 101:10 121:4 143:4,11 181:14 200:1 worded 137:21 words 59:23,24 113:11 156:24 240:17 work 11:11 18:2 20:9 28:21 29:5,19,24,25 30:2,4 31:23 39:20,21 40:2,9 42:4 44:7,18,23 44:24 64:1 88:17 92:8 103:21 104:16 121:13 125:22 165:22 196:13 208:18 workday 27:1 worked 157:10 228:23,24	workers 162:17 working 10:14 20:22 37:21 155:4 works 187:8 world 206:10 worried 139:18 139:20,21,22 139:23 184:11 worries 122:2 123:16 158:16 209:24 worry 116:14 wow 103:1 196:8 197:18 writing 33:1,5 100:10 written 18:5 23:18 29:25 153:4 242:11 wrong 57:12 84:25 157:15 165:15 175:6 183:2 189:22 236:2 wrongdoing 217:4 219:24 221:23 223:4 230:14 wrongfully 235:24
x			
x 4:1			

[yale - zoom]

Page 65

y	132:2 133:20	116:16 118:2
yale 35:24	134:13 135:2,4	129:11 146:22
36:10,14,20	137:3 140:11	173:20 175:14
37:3,4 38:4	142:14 144:9	197:12,13
yeah 9:20 14:6	144:13 146:17	214:12 219:10
14:6,12 20:12	149:8 154:5,10	230:5 231:6
21:5 22:17 24:7	154:10 157:24	232:7
25:17 29:2,22	158:19 159:24	yep 13:8 19:21
29:23 30:6 40:3	160:1,1,10,20	52:8 97:18
44:2,16 46:3	164:4,6,7,7	110:15 124:3
51:10 53:15	166:23 175:16	129:7 130:25
54:2,24 55:22	175:16,16,23	131:14 188:8
66:10,10 67:24	176:2 177:11	203:13
68:16,24 69:2	178:23 179:25	yesterday
72:8 73:20 74:3	180:6 183:19	12:22 26:15,18
75:1,25 76:1	183:25 184:16	208:7 209:11
77:6 78:12	184:19,25	york 3:6 146:25
79:25 81:1,5,5	188:4 191:10	149:17 150:3,6
81:22 87:20	192:17 196:18	150:13
89:6,7 91:2	199:2,25 200:3	z
93:16,16 95:14	201:23 207:23	zoom 2:6,21
96:3 101:10,13	208:14 210:10	3:14,21 16:24
101:19 104:21	211:5,9 213:23	
106:8,8,19	214:3 215:8	
108:24 109:11	216:14 223:9	
111:23,25	226:18 229:5	
112:10 115:6	230:20,20	
115:13,18	year 13:19	
116:2 122:9	25:23 36:7	
123:12,16	37:12 239:13	
126:4,4 127:3	240:11	
127:10 128:6	years 44:21	
128:10 129:4	49:19 57:20	
130:2,11,17,18	61:19 63:11	
131:8,16,24	65:11 82:3	
	90:12 103:9	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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